DOCUMENT RESUME

ED 067 718 CS 500 024

AUTHOR Tedford, Thomas L., Ed.
TITLE Free Speech Yearbook: 1970.
INSTITUTION Speech Communication Association, New York, N.Y.
PUB DATE 70
NOTE 121p.
AVAILABLE FROM Speech Communication Association, Statler Hilton HOTEL, New York, N.Y. 10001 ($2.50)

EDRS PRICE MF-$0.65 HC-$6.58
DESCRIPTORS *Bibliographies; Censorship; *Civil Liberties; *Course Descriptions; *Court Litigation; Dress Codes; *Freedom of Speech; Rhetoric; Symbolic Language

ABSTRACT

This book is a collection of syllabi, attitude surveys, and essays relating to free-speech issues, compiled by the Committee on Freedom of Seech of the Speech Communication Association. The collection begins with a rationale for the inclusion of a course on free speech in the college curriculum. Three syllabi with bibliographies present guides for courses on the social influence of speech, intellectual freedom and censorship, and freedom and responsibiiities of speech. The results of two surveys of student attitudes about free-speech issues are reported. The essays are concerned with current symbolic behavior such as free expression, government control of information, haircuts and school expulsion, and Supreme Court decisions in the 1969-70 term relatin to the First Amendment. The book ends with a bibliography of articles, books, and court decisions on free speech from July 1969 to June 1970. (RN)

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ED 067718

Free Speech Yearbook: 1970

a publication of
The Committee on Freedom of Speech
of the
Speech Communication Association

Editor, Thomas L. Tedford
Associate Professor of Drama and Speech
University of North Carolina at Greensboro

Speech Communication Association
Statler Hilton Hotel
New York, N.Y. 10001
1970

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EDITOR'S COMMENTS

Acknowledgments

The Editor wishes to express his appreciation to the members of SCA's Committee on Freedom of Speech who served as editorial consultants for the Free Speech Yearbook: 1970. Particular gratitude is expressed to Alvin Goldberg, Franklyn Haiman, Haig Bosmajian, Alton Barbour, Richard Johannesen, Robert M. O'Neil, and Nancy McDermid, each of whom read numerous manuscripts. In addition, L. Dean Tadely of the University of North Carolina at Greensboro cheerfully exercised his knowledge of statistical methods in analysing the papers which presented statistical data. Finally, the Editor wishes to thank Steve Cauble for his patience and skill in typing the final manuscript.

Call for Papers for 1971

Those who wish to submit syllabuses or scholarly articles to be considered for use in the Free Speech Yearbook: 1971 should send their manuscripts as soon as possible to Thomas L. Tedford, Dept. of Drama and Speech, UNC-G, Greensboro, N. C. 27412. The primary deadline for contributions is August 1, 1971, and the secondary and final deadline is September 1, 1971. Those articles submitted by the primary deadline will be given first consideration. Writers should follow Kate L. Turabian's A Manual for Writers, Third Edition, Revised (University of Chicago Press, 1967).

The Newsletter

The Committee on Freedom of Speech publishes its newsletter, Free Speech, each quarter of the academic year. News concerning freedom of speech as well as subscription requests should be sent to the editor, Haig Bosmajian (Dept. of Speech, University of Washington, Seattle, Washington 98105).

~~SPEECH ASSOCIATION of AMERICA~~
SPEECH COMMUNICATION ASSOCIATION

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NEW YORK, N. Y. 10001
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OFFICE OF THE PRESIDENT

September 30, 1970

Professor Thomas L. Tedford, Editor
Free Speech Yearbook: 1970
Department of Speech and Drama
The University of North Carolina at Greensboro
Greensboro, North Carolina 27412

Dear Professor Tedford:

As President of the Speech Communication Association I welcome for myself and the Association the Free Speech Yearbook: 1970. I contratulate you the Editor and your colleagues of the Association's Committee on Freedom of Speech on one more excellent contribution to the furtherance of an essential purpose of the Association and of the professions for which it speaks.

As American society becomes rapidly more and more complex and unwieldy, and as the potentials for division and conflict grow and strengthen as perhaps never before, fundamental reliance on freedom of speech as a basic condition of the good society tends to be more easily honored in the breach than in the practice. Suppression of dissent or reform on the one hand, and harassment of the voices of assent on the other seem simpler and less difficult instruments of stability than the rhetoric of agitation and control. It is easier to blow on rams horns and bellow in chorus than to negotiate with the Jerichese.

In circumstances such as these, jealous care for the preservation of free and open public and private discussion and deliberation on all matters--evanescent and inconsequential, shattering and revolutionary--must be the responsibility of people of good will and good sense. Especially is such care appropriate to the profession of Speech Communication, whose particular province includes research into the problems and history of free speech, education of youth in school and college in those problems and that history, and active, vigilant investigation and exposure of hazards to freedom of speech and its correlatives in the context of the times.

-v-

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Speech Monographs; The Speech Teacher
ANNUAL CONVENTION:
DECEMBER 27-30, 1970
NEW ORLEANS, LOUISIANA

For those ends, as you know, the Speech Association of America some years ago created its Committee on Freedom of Speech, and that committee is continued in the Speech Communication Association. We the membership have ample reason to be gratified with the achievement of the men and women who have devoted their talents to those ends. The Committee has functioned as an interest group in SAA to prepare illuminating programs for the annual meetings. It is a sensitive, timely educational agency for the profession through its newsletters and Free Speech Yearbook; and it serves as a watchdog of the current scene, especially of developments which may affect the welfare of our professions.

Until this year the Committee has not only prepared and edited the Yearbook but has published and distributed it as an independent venture. Now, however, the Association has assumed responsibility for publication and distribution, in recognition of the wide importance and value of the venture which the editors, the authors, and the Committee have well established.

I am indeed pleased to have a small share in the Free Speech Yearbook: 1970.

Yours sincerely,

Donald C. Bryant

Donald C. Bryant

DCB/bgs

WHY TEACH FREEDOM OF SPEECH?

Franklyn S. Haiman
Professor of Public Address and Group Communication
Northwestern University

The 1970 convention of the Speech Communication Association marks exactly one decade since the birth in St. Louis of what has become the Committee on Freedom of Speech of our national organization. It was at one of those after-hours convention bull sessions that a small group of SAA members decided the obvious--that teaching and research on problems of freedom of speech is a significant and legitimate area of interest that had, for some reason, been left unattended by our discipline, and that a concerted effort should be undertaken to change that situation. The response to this initiative by other members of the profession was more enthusiastic, more widespread, and more immediate than any of us at that first caucus could possibly have predicted or hoped for. It was obviously an idea whose time had come, indeed, was apparently overdue.

In the short ten years that have ensued, the Free Speech newsletter has been one of the most regular, substantial, and appreciatively read publications of the association's interest groups, the Free Speech Yearbook has become an institution, and the Committee has become an accepted and respected part of the SCA Establishment--a far cry from its stormy first two years. Courses or sections of courses devoted to the study of freedom of speech have sprouted into existence in speech communication departments all over the country; books and dissertations have been written on the subject by members of the profession; and this writer's Quarterly Journal of Speech article on the "Rhetoric of the Streets" was appended to the petitioner's brief submitted to the U. S. Supreme Court in Gregory v. City of Chicago, 394 US 111 (1969), a case involving the picketing of Mayor Richard Daley's home, and it partially inspired the appelant's brief in Street v. New York, 394 US 576 (1969), an impressive document by the New York Civil Liberties Union arguing a communication theory based rationale in behalf of First Amendment protection for flag-burning and other non-verbal symbolic acts.

It is difficult for one who has been deeply immersed in the developments of these ten years to realize that the question, "Why Teach Freedom of Speech," is still an unanswered one for many people, both within our discipline and outside it. It is also easy, and pleasant, to forget the recalcitrant colleagues from other divisions of the university who, in the deliberations of the curriculum committee, were dubious about the introduction of such course work in a department of speech. The arguments which prevailed in that situation, however, are the same as those which can be

offered today for any who may still require an answer to the query, "Why Teach Freedom of Speech?" or "Why do it in the speech department?"

The first and most basic point is that the viability of our very profession rests on the assumption that freedom of speech, as a political principle, is sufficiently understood and accepted in the society in which we work so that what we do has substance and meaning. If the national debate proposition were "Resolved, that twelve angels can dance on the head of a pin," if classroom exercises were confined to the declamation of Russell Conwell's "Acres of Diamonds," and if doctoral dissertations consisted of such research as counting the alliterations in Agnew's addresses, we would and should be exiled from the academy. The vitality of the teaching of speech, from classical to modern times, has ebbed and flowed with the relative absence or presence of freedom of speech in the surrounding society. If, as a recent CBS poll suggested, a silent majority of Americans do not understand or appreciate the First Amendment and its ramifications, then we, as a profession have a primary vested interest in developing that understanding and appreciation. As the Legislative Assembly of our national association resolved on August 18, 1963 in Denver, "The Speech Association of America subscribes to the view of the United States Supreme Court that freedom of speech holds a preferred position in the constellation of American constitutional principles."

The second point is an argument by analogy to the field of journalism, though it is a sad commentary on the history of our own discipline that one should even have to reach for such an analogy. Courses in "press law" have been in existence as long as there have been departments or schools of journalism, it being taken for granted that students in training to be writers in a public medium must know their legal rights and responsibilities. Certainly the oral communicator, whether his medium be the public speech or rally, radio or television, stage or screen, needs equally to know his rights and responsibilities--especially in an era when so much controversy surrounds the exercise of those rights and the relevant laws and court decisions are as complex as they are. When a young black man in California is indicted for "threatening the life of the President" in a speech while another young black man in Washington, D.C. is supported by the U. S. Supreme Court for virtually the same kind of comment; when a student in one school in New York City is told by a Court that it is permissible to "sit out" the pledge of allegiance to the flag but another court in the same city required another student to either stand silently or leave the room during that ritual; when the producer, director and cast members of Che or The Beard are charged with violating the obscenity laws while Hair is unclipped; when the film, I Am Curious, Yellow is found by a U. S. Circuit Court of Appeals to merit First Amendment protection but the supreme courts of Massachusetts and Maryland find just the opposite; and when the Smothers Brothers seem not to know from one week to the next whether they will survive the scrutiny of their network's censors; it is clear that there is much our students need to know.

Third, there is a unique research and writing contribution that scholars

in speech communication can make to the development of the law of freedom of speech which lawyers, or political scientists, because of the particular perspectives from which they view the world, are not likely to offer. It is the semanticist who can most effectively analyze the weaknesses of the Supreme Court's "fighting words" doctrine (words which "when said without a disarming smile. . . as ordinary men know, are likely to cause a fight") or its obscenity test ("whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to the prurient interest"). It is the communications experimentalist who is most likely to produce evidence which casts doubt on the law's unquestioned assumption that a speaker can justifiably be held to account for "inciting" illegal conduct in his listeners. It is the historical critic of free speech controversies who may sharpen our perceptions regarding the political and social causes of repression, and the empirical field researcher who may help us better understand the fears and anxieties which make the public's acceptance of the First Amendment's mandates so difficult.

The foregoing comments will hopefully answer the question as to why freedom of speech should be taught, and why it should be taught in speech departments, but may still leave open the question as to whether speech professors, who are not also lawyers, are competent to do that teaching. This may be a more difficult question since clearly most speech teachers are not now adequately trained to do the job, nor can that be corrected by a quick cram course. The area is a highly complex one, and the amount of literature one must have read to be literate in the field is huge. The task should be undertaken with intelligence, with humility, and in small steps. But as surely as there are now few teachers of speech fully equipped for this undertaking, there are some who are well equipped and many others who can make themselves so if they choose to devote the time and effort to it. When this writer's new course, and the issue of the proposed instructor's competence to teach it, hit the fan in our graduate school curriculum committee seven years ago, with the doubts coming primarily from a chemist, an English professor, and a mathematician, it was happily, and of course most persuasively, two professors of law and a political science professor of constitutional law who came to the rescue. One law professor pointed out that he had learned his labor and anti-trust law in law school from an economist and probably more effectively than he would have from a lawyer. The political science professor asserted that he could never, within the broad framework of responsibilities and time assigned to his constitutional law course, give the specialized and concentrated attention to strictly First Amendment problems that they undoubtedly merited. The interchange was reminiscent of that perhaps apocryphal conversation between Alexander Meiklejohn and Felix Frankfurter in which Felix suggested that Alec ought to go to law school, and Alec said he would accept the advice if Felix would go to philosophy school.

There is, finally, a bonus to be derived from the addition of course work in freedom of speech to the curriculum of our discipline. Such work is indisputably "relevant" in the eyes of our students, as well as intellectually challenging for them. Although some of our colleagues may quarrel with the educational legitimacy of the first of those criteria, our restive students certainly would not, and it is they, after all, whom we allegedly are serving.

OUTLINE FOR
CONTEMPORARY PROBLEMS IN FREEDOM OF SPEECH

Franklyn S. Haiman
Northwestern University

Catalog Description: A study of free speech controversies in the United States during the twentieth century, with particular emphasis on the current status of laws and norms affecting the oral communicator.

Class Level: Juniors, Seniors, and Graduate Students

Amount of Credit Given: 1 Quarter Unit (Equivalent to 4 quarter hours)

Method of Teaching: Informal lecture and discussion

Texts (All are paperbacks):

Zechariah Chafee, Free Speech in the United States, Athenium, 1969.

Franklyn Haiman, Freedom of Speech: Issues and Cases, Random House, 1965.

Robert M. O'Neil, Free Speech: Responsible Communication Under Law, Bobbs Merrill, 1966.

Leonard Levy, Freedom of Speech and Press in American History: A Legacy of Suppression, Harper Torchbook, 1963.

Areas covered:

Unit 1 - Political Heresy and the National Security
Unit 2 - Provocation to Anger and Preserving the Peace
Unit 3 - Artistic Expression and Public Morality

Supplementary Readings:

U. S. Supreme Court Opinions in the following cases:

West Virginia Board of Education v. Barnette
Dennis v. U. S.
Yates v. U. S.
Barenblatt v. U. S.
Terminiello v. Chicago
Feiner v. New York
Walker v. City of Birmingham
Tinker v. Community School District
Roth v. U. S.
Freedman v. Maryland
Ginzburg v. U. S.
Red Lion Broadcasting Co. v. F. C. C.

Alexander Meiklejohn, Political Freedom, Harper, 1960
Street v. New York, Brief of Appellant
John Stuart Mill On Liberty
Harry Kalven, Jr., "The New York Times Case: A Note on the 'Central Meaning of the First Amendment,'" Supreme Court Review, 1964; "The Concept of the Public Forum: Cox v. Louisiana," Supreme Court Review, 1965.
Dean Alfange, "The Balancing of Interests in Free Speech Cases: In Defense of an Abused Doctrine," Law in Transition Quarterly, Winter, 1964.
Franklyn Haiman, "The Rhetoric of the Streets: Some Legal and Ethical Considerations," Quarterly Journal of Speech, April, 1967.

SYLLABUS FOR
THE SOCIAL INFLUENCE OF SPEECH

Richard L. Johannesen
Assistant Professor of Speech and Theatre
Indiana University

Catalog Description: Influence of public address, historical and current problems of freedom of speech, ethics, propaganda, and demagogery.

Class Level: Designed for undergraduates

Amount of Credit Given: Three semester hours of credit

Method of Teaching: Lecture-discussion on assigned readings; discussion of relevant contemporary events; three examinations; optional term paper. Readings are assigned from sources in the syllabus.

Texts (All are paperbacks):

Haig Bosmajian, Readings in Speech, Harper, 1965.
Franklyn Haiman, Freedom of Speech, Random House, 1965.
Richard L. Johannesen, ed., Ethics and Persuasion, Random House, 1967.
Terrence Qualter, Propaganda and Psychological Warfare, Random House, 1962.
Donn Parson and Wil Linkugel, eds., Militancy and Anti-Communication, 1969. (proceedings of a summer symposium featuring Harry A. Bailey, Wm. Bruce Cameron, Daniel Boorstin, and Jack Daniel; order from Donn Parson, Dept. of Speech and Drama, U. of Kansas, Lawrence, Kansas 66044)

Outline and Sources:

I. Issues of Freedom of Speech
  A. The Constitutional and Legal Background
    1. The First Amendment
    2. Landmark Court Decisions
  B. The Philosophical Background
    1. The Libertarian Arguments
    2. The Arguments for Control
  C. Contemporary Problems in Free Speech
    1. The College Campus
      a. Student free speech
      b. Off-campus speakers
      c. Academic freedom for the teacher
    2. Provocation to Anger and Preserving the Peace
    3. Political Heresy and National Survival
    4. Artistic Expression and Public Morality

Sources:

Haiman, Freedom of Speech, entire book.
Bosmajian, Readings in Speech, Chaps. 24 and 25.
Robert O'Neil, Free Speech: Responsible Communication Under Law, Chaps. 1 and 2.
C. Herman Pritchett, The American Constitution, Chaps. 22, 24, 25.
Marvin Summers, ed., Free Speech and Political Protest.
Haig Bosmajian, ed., Principles and Practice of Freedom of Speech.
Haiman, "The Rhetoric of the Streets: Some Legal and Ethical Implications," in Auer, The Rhetoric of Our Times, pp. 101-119.
Martin Luther King, "Love, Law and Civil Disobedience," in Linkugel, Allen, and Johannesen, eds., Contemporary American Speeches, 2nd. ed., pp. 63-75.
Daniel Boorstin, "Dissent, Dissension, and the News," in Contemporary American Speeches, 2nd. ed., pp. 203-211.
Alexander Meiklejohn, Political Freedom.
Zechariah Chaffee, Free Speech in the United States.
Abe Fortas, Concerning Dissent and Civil Disobedience.
Howard Zinn, Disobedience and Democracy.
E. G. Williamson and John Cowan, The American Student's Freedom of Expression.

II. Problems of Ethics in Oral Communication
   A. Some Perspectives for Viewing Ethical Problems
      1. Religious
      2. Philosophical - the inherent nature of man
      3. Political - the democratic premise
      4. Utilitarian
      5. Situational
   B. Typical Ethical Problems
      1. The role of means and ends as criteria
      2. Individual vs. societal and relative vs. absolute standards
      3. Should ethical standards differ in politics, religion, advertising, and education? In peacetime and wartime?
      4. Is public confidence in truthfulness of public communication a contemporary societal goal?
      5. To what extent are emotional appeals unethical?
      6. Is ghostwriting ethical?
      7. What ethical standards should function in contemporary American discourse?

Sources:

Johannesen, Ethics and Persuasion, entire book.
Bosmajian, Readings in Speech, Ch. 8.

Bruce Felknor, Dirty Politics.
Thomas Nilsen, Ethics of Speech Communication.
Ernest Bormann, "The Ethics of Ghostwritten Speeches," Quarterly Journal of Speech (Oct., 1961), 262-267. Also comments by Donald Smith and Bormann, QJS (Dec., 1961), 416-421.

III. The Nature and Impact of Contemporary Rhetoric
- A. Trends in American Public Persuasion
  - 1. Role in Congressional Debate
  - 2. Influence of the Mass Media
  - 3. Stylistic characteristics
- B. The Rhetoric of Confrontation
  - 1. Justifications and Underlying Assumptions
  - 2. Characteristics
  - 3. Effectiveness

Sources:

Parson and Linkugel, Militancy and Anti-Communication, entire book.
Bosmajian, Readings in Speech, Ch. 20.
James Golden, "Political Speaking Since the 1920's: Changes in the Idiom," in Linkugel, Allen, and Johannesen, Contemporary American Speeches, 2nd. ed., 153-167.
Sen. Paul Douglas, "Is Campaign Oratory a Waste of Breath?" in Christensen and Williams, eds., Voice of the People, 360-365.
William N. Brigance, ed., A History and Criticism of American Public Address, Vol. I, pp. 136-144.
Scott, Robert, and Donald Smith, "The Rhetoric of Confrontation," Quarterly Journal of Speech (Feb., 1969), pp. 1-8.
J. J. Auer, ed., The Rhetoric of Our Times.
Edward P. J. Corbett, "The Rhetoric of the Open Hand and the Closed Fist," College Composition and Communication, 20 (Dec., 1969), 288-296.
Herbert W. Simon, "Confrontation as a Pattern of Persuasion in University Settings," Central States Speech Journal, 20 (Fall, 1969), 163-170.

IV. Propaganda
- A. How should we define propaganda?
  - 1. Selected definitions
    - a. A neutral view: propaganda as a genre of persuasion
    - b. A negative view: propaganda as unethical suasion
  - 2. Toward a functional definition
- B. Propaganda in Action
  - 1. Advertising
  - 2. The U. S. Information Agency

3. Rumor
4. World War II Germany
5. Soviet Russia

Sources:

Bosmajian, Readings in Speech, Chaps. 6, 7, 14, 19.
Qualter, Propaganda and Psychological Warfare, entire book.
Erwin Fellows, "Propaganda and Communication: A Study in Definitions," Journalism Quarterly, 34 (1957), 431-442.
Henderson, Edgar H., "Toward a Definition of Propaganda," Journal of Social Psychology, 18 (1943), 71-87.
Leonard Doob, "Goebbels' Principles of Propaganda," Public Opinion Quarterly, 14 (1950), 419-442.
Z. A. B. Zeman, Nazi Propaganda, pp. 9-53.
Ernest K. Bramstead, Goebbels and National Socialist Propaganda, pp. 18-29, 197-229, 325-334, 450-457.
John Clews, Communist Propaganda Techniques, pp. 12-30.
Robert Strauz-Haupe, et. al., Protracted Conflict, pp. 175-203.
Robert E. Elder, The Information Machine: The United States Information Agency and American Foreign Policy, pp. 1-24, 178-185.

V. Demagogues
   A. What is a demagogue?
      1. Characteristics
      2. The crucial role of the spoken word
   B. The Demagogue in Action
      1. Adolf Hitler
      2. Huey Long
      3. Joseph R. McCarthy

Sources:

Bosmajian, Readings in Speech, Chaps. 9, 22, 23.
Reinhard Luthin, American Demagogues, Chaps. 10, 11, 12.
Haig Bosmajian, The Rhetoric of the Speaker, pp. 53-75.
Adolf Hitler, Mein Kampf.
F. W. Lambertson, "Hitler, the Orator," QJS (April, 1942), 123-131.
Fred Casmir, "The Hitler I Heard," QJS (Feb., 1963), 8-16.
Charles Lomas, The Agitator in American Society, Ch. 2.

SYLLABUS FOR
INTELLECTUAL FREEDOM AND CENSORSHIP

Kenneth F. Kister
Assistant Professor of Library Science
Simmons College (Boston, Massachusetts)

Catalog Description: Historical development of concepts of intellectual freedom and consideration of restraints that past and present societies have imposed on it. Emphasis on problem areas of civil liberties and obscenity in the United States. Guest speakers, reading, discussion, and a substantial research paper.

Class Level: A graduate level course open to students in the School of Library Science who possess degree candidacy or postgraduate standing.

Amount of Credit Given: The course, an elective, carries four semester hours credit.

Method of Teaching: The course is taught principally by reading and discussion. In order to focus discussion, especially designed questions are issued which complement outside reading material. In addition, two or three guest speakers are invited to meet with the class each semester. Also, a research paper which reflects high standards of scholarship is required. Finally, an examination is scheduled and administered at the end of the course, although it is an optional requirement.

Required Texts:

Barrett, William. Irrational Man. Doubleday (Anchor), 1962. (paper)
Boyer, Paul S. Purity in Print; the Vice-Society Movement and Book Censorship in America, Scribner, 1968.
Brecht, Bertolt. Galileo. Grove (Black Cat edition), 1966. (paper)
Ernst, Morris & Alan Schwartz. Censorship: The Search for the Obscene. Macmillan, 1964.
Fromm, Erich. Escape from Freedom. Avon, 1966. (paper)
Kafka, Franz. The Trial. Modern Library. (Orginally published in 1937.)
Koestler, Arthur. Darkness at Noon. Bantam, 1966. (Orginally published in 1941.) (paper)
Knovitz, Milton R. Expanding Liberties. Viking (Compass), 1966. (paper)
McClellan, Grant (ed.) Censorship in the United States. Wilson, 1967.
Marcuse, Herbert. One-Dimensional Man. Beacon, 1964. (paper)
Mill, John Stuart. On Liberty. Bobbs. (Orginally published in 1859.) (paper)

Milton, John. Areopagitica. Edited by H. B. Cotterill. St. Martins. (Orginally published in 1644.) (paper)
Randall, Richard S. Censorship of the Movies; the Social and Political Control of a Mass Media. Univ. of Wisconsin, 1968.

Course Outline:

A. Historical Background from Plato to the Reformation
   1. Definitions and types of censorship
   2. Socrates, the free speech martyr
   3. The Platonic concept
   4. The rise of Christianity
   5. Renaissance attitudes
   6. The Protestant Reformation
B. Roots of Modern Concepts
   1. Galileo and the rise of secularism
   2. Milton's essay on press freedom
   3. Mill's social utility of freedom theory
C. Freedom of Expression
   1. Legal limitations on expression
   2. Speech versus conduct
   3. Legal interpretations of the First Amendment
      a. Bad Tendency Test
      b. Clear and Present Danger Doctrine
      c. Ad Hoc Balancing Test
      d. Absolute (or definitional) Test
   4. Extralegal initatives
      a. Behavioral patterns of extralegal censors
      b. Uses and abuses of police power as example
   5. Press Freedom: Four Theories
D. Making One-Dimensional Men
   1. Analysis of Marcusian thought
   2. Darkness at Noon
      a. Communist ideology and practice
      b. Loyalty and disloyalty
E. Philosophy of Freedom
   1. Definitions and types of freedom
   2. Existential philosophy and individual freedom
F. Psychology of Freedom
   1. Fear of freedom and the quest for authority
   2. Conforming individuals
      a. Kafka's Joseph K.
      b. Contemporary examples
G. Obscenity, Morality, and the Law
   1. Legal definitions
   2. Landmark court decisions
   3. Obscenity legislation, past and present
   4. Effects of pornography on human behavior

5. Print versus pictorial representation
6. Hard-core censors and their methods

H. Summing up: the librarian in a censorious world
1. The profession's dismal record
2. Possibilities for the future

Supplementary Reading List: The following reading list is issued as a working bibliography. In addition, individual reading assignments will be made from this list as the semester progresses.

Civil Liberties: Belief and Expression

Abraham, Henry J. Freedom and the Court: Civil Rights and Liberties in the United States. Oxford Univ. Pr., 1967.

Alexander, James. A Brief Narrative of the Case and Trial of John Peter Zenger. Edited by Stanley N. Katz. Harvard Univ. Pr., 1963.

American Civil Liberties Union. Annual Report. 1921-.

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Pornography Collection

Gagnon and Simon have written (in Trans-action, July-August, 1967): "In middle class circles, many young men and the majority of females may grow up without ever having seen hard-core pornography," and the Kronhausens note (in Pornography and the Law) that: "It is crucial to an understanding of the problem at hand that the difference between pornography and erotic realism be made clear from three aspects,

namely, intent, content, and effect, and it has been our experience that this can only be done by an examination of both kinds of writing." (Author's emphasis.)

With these two thoughts in mind, a small collection of pornography (?) has been developed for the use of students in this course. Each student should examine the collection sometime during the semester, in order to form a more perfect judgment about what is and what is not pornographic. In addition, samples of pornography are found in Steven Marcus's The Other Victorians; Ullerstam's The Erotic Minorities; and the Kronhausens' Pornography and the Law, each of which is listed above.

The Research Paper

As indicated in the course description above, a substantial research paper is required. The student is free to choose his own topic; however, for the purpose of guidance, a number of suggested subjects are listed below. It should be noted, too, that the paper may be based, at least in part, on the results of original research conducted by the student. For instance, a questionnaire survey of parental attitudes toward violence in television programming might be undertaken in a local community; newsmen in the Boston area might be interviewed concerning press restrictions; or area librarians surveyed in order to determine their understanding of American Constitutional principles.

The paper should be approximately fifteen pages in length, although this will doubtless vary according to the topic. Whatever the length, the result should be a typewritten paper which reflects high standards of scholarship.

As noted on the class schedule, paper topics should be chosen by the third class meeting. In addition, a one-page outline noting general treatment and major sources is due at that time.

The following topics are suggested:

Extralegal Police Power: Effects on Intellectual Freedom
The Velikovsky Affair
Ulyssess as Film and Book in America
Why the Fifth Amendment?
Book Censorship in Ireland
The Right to Travel
The Lord Chamberlain vs. the British Theatre
Pornography Swedish Style
Senator Joseph McCarthy, Communism, and the Constitution
Civil Liberties and the Hiss Case

The Ladies Chatterley, Fanny Hill, and Pamela
Homosexuals and Civil Rights
Censorship and Civil Rights
Prayer and the U.S. Supreme Court
Motion Pictures during the Will Hays Years
Comic Books and the Censors
The "New" Obscenity: Violence on Television
The Nature and Power of Political Propaganda
Japanese Relocation: Injustice or Necessity?
The Peter Zenger Case
A History of the American Civil Liberties Union
Is Privacy a Right?
The Catholic Attitude toward Smut
Drug Restrictions: Harmful to Intellectual Freedom?
The Post Office and the Obscenity Business
Red Scare in Hollywood: Blacklists Can Be Effective
Literary Censorship in the USSR
Press Censorship in South Africa
What To Do About Hate Literature?
The Influence of the "Hicklin Rule"
Self-Censorship in Motion Pictures and Television: the Questionable Codes
1984, Brave New World, One, and We: Political Suppression in Fiction
The Wide World of Fuck, Etc.--the Psychology of Dirty Words
Book Burning and the Nazis
England since the Obscene Publications Act of 1959
Girodias and Olympia Press
The Berkeley Riots, Columbia, Brandeis, and Civil Liberties
HUAC and the American Way of Life
How Symbolic Can Speech Get?
Freedom of Information and the U.S. Government
CLEAN in California
What Do We Know about the Effects of Pornography on Juveniles?
Censorship in Franco's Spain
Meet Anthony Comstock, Folk Hero
John Locke's Influence on American Libertarianism
How Free is Man? A Philosophical / Psychological View
Ginzburg, Mishkin, and Fanny Hill: Three Funny Cases for the Justices

Final Examination

The final examination is optional for each student. Since the final grade will be determined by 1) the quality of class discussion; and 2) the research paper, some students might want to add the examination as a third grading criterion.

For those choosing to take it, the final examination will concentrate on the required reading assignments. The examination will be three hours long, will be closed book, and will consist of eight broad questions, of which the student will be asked to complete five.

SYLLABUS FOR
FREEDOM AND RESPONSIBILITIES OF SPEECH

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Preface: Rationale, Methodology, and Course Structure

The Rationale

The relationships between the individual and his society is the major issue of our time. Communication is perhaps the most important single factor which defines, determines, and places restrictions upon these relationships. A course in freedom and responsibilities of speech as presented here would do much to meet those reasonable and legitimate demands of students and educators alike to make the university curriculum more relevant to the problems encountered in today's society.

When we speak of relevance, perhaps no other social group is more "relevantly" involved with the issues and problems surrounding freedom of speech than American college students. During the past decade, and especially since 1964, with the advent of the "Free Speech Movement" at the University of California at Berkeley, issues involving freedom of expression, association, and assembly have come to focus on American youth in general, and college students in particular. Some of the most significant pronouncements of the United States Supreme Court on First Amendment issues have involved students (See, for example, Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969); United States v. O'Brien, 391 U.S. 367 (1968); Edwards v. South Carolina, 372 U.S. 299 (1963); Adderley v. Florida, 385 U.S. 39 (1966); and Schacht v. United States, ___ U.S. ___, 26, L.Ed. 2d 44 (1970).)

The Methodology

A course in freedom of speech which does not deal significantly with the decisions of the Supreme Court over the past century is difficult to imagine. When we deal with the concept of "rights," we must necessarily deal with the legal definition of those rights. While it may make some sense to speak of "duties" as issuing from some set of moral principles, the phrase "moral right," in the context of modern, heterogeneous society, is meaningless. Consequently, the course described above, places the major emphasis on the laws governing expression and the interpretations of those laws by the highest Court in the land.

The approach used in presenting the course materials is the Socratic, or Case Method, whereby the students study the individual cases and other materials assigned, and through a dialectial exchange with the instructor in the classroom, come to a better appreciation and understanding of what the law is, and how it got to be that way. This method is used almost exclusively in every major American law school, at least for the first year course of study. This does not mean that the case method is, or should be, the exclusive province of the law school

If one were to attempt to give a rationale underlying such a pedagogical method, he might arrive at the following reasons. First, the student becomes acquainted with the reasoning processes employed by appellate judges in arriving at their decisions. He becomes aware of the complex issues and conflicts which arise in society's attempt to prescribe rules of behavior for its constituents. From this encounter, one hopes that the student will possess a better understanding of the "why's," and not just the "what's" of the law. One could present a strong case for the proposition that the general breakdown of respect for law and order (an indictment levelled chiefly against our young people) is due to their ignorance of the jurisprudential foundations of the law, even to the point of not knowing that such a thing as jurisprudence exists. As more and more of our citizens proportionately are educated and trained to think critically at institutions of higher learning, the greater is the need for giving them an understanding of the rules which regulate their behavior, and the justification for those rules.

A second reason follows from the first. Through the case method, the student acquires an appreciation of how the law got to be the way it is. Because society necessarily is a product of decisions made in the past, a study limited to the present will not and cannot account for all the rules which exist today. The law, probably more than any other institution, is a product of history; and only by studying that history can the student become fully aware of the nature of the society he lives in . The student will learn that there is justification for "tradition" and precedent--if the laws were changed constantly, enforced or not enforced at the whim of the Judge, without stare decisis to guide him, who would dare act with assurance of impunity from the law's sanction?

Finally, the case method should give the student a better understanding of the necessary complexity of the law, of the difficult decisions judges must make when litigants who come before them make conflicting claims, based upon conflicting rights. To cite the old jurisprudential axiom, "The law is a seamless web"; it must, by necessity, affect every aspect of our lives. Only by studying examples of the seemingly infinite number of conflicts which are adjudicated can the student begin to understand why the judicial system operates with such complexity.

After studying the issues and principles contained in the cases, students should be given the opportunity to apply these principles to other fact situations. Part of the Syllabus is devoted to the presentation of twelve hypothetical problems for class discussion. These hypotheticals have been designed to summarize the constitutional principles inherent in a particular subject area, raising a number of issues which the student must be able to recognize, isolate and resolve, applying the knowledge derived from his readings. The format and structure of these hypotheticals generally follow the law school examination question, and similar questions would be used for purposes of examination in this course.

Because a familiarity with legal research materials usually is outside the realm of the student's academic experience, the Syllabus provides a basic index of research sources--reporters, encyclopedias, statutes, digests and periodicals. The index fulfills a twofold purpose: (1) to provide the student with an adequate understanding of the citations he will encounter in reading the cases contained in the texts; and (2) to provide him with a working bibliography of sources which will aid him in his own legal research for the major paper.

The Course Structure

Every instructor and every textbook writer will have his own idea of how the materials and issues in a course should be organized. The five-part structure outlined in the Syllabus is by no means the only way; however, the substance of the materials contained in the five major headings should be covered in some form in any class in freedom of speech. Part One, for example, attempts to provide a philosophical and historical background to the recurrent questions in freedom of speech. The materials covered in this section are mostly readings in political philosophy, which have historical value, such as Mill's Essay on Liberty. Part Two essentially is an introduction to the Constitution and the judicial system, and provides a framework within which the discussion of substantive issues will take place. Parts Three and Four deal with the limitations placed by society on the content and the means of expression, covering the major substantive issues with which the Supreme Court has dealt in this century. The last part focuses upon the campus, applying the principles discussed in the four previous divisions. Included is a case study of a campus disturbance (Columbia, 1968), which provides a concrete situation upon which to focus these principles.

Syllabus: Freedom and Responsibilities of Speech*

Course Emphasis: The study of the rights protected by the First Amendment to the United States Constitution, the duties and responsibilities attendant to such rights, and the problems and conflicts which result from the exercise of freedom of expression in an open society.

Purposes of the Course: To give the student a greater appreciation of the legal, political, social and ethical issues and problems concerning the right of freedom of expression.
To introduce to the student legal concepts, methods, analysis, and procedures which must accompany any discussion of rights and duties.
To present to the student contemporary issues from a communications point of view.
To develop the student's ability to think and analyze critically controversial subject matter.

Methodology: We shall be using the "Socratic" or dialectic method in exploring and analyzing the assigned materials. In order for this method to be effective, students must be prepared to discuss critically the materials assigned for each class day.

Structure of Course: The course is divided into five major parts:

A. General Concepts Concerning Freedom of Religious and Political Expression.
B. The Constitution, the Supreme Court and Freedom of Speech.
   1. Early Notions of Constitutional Development
   2. First Amendment Conflicts
C. Limitations on the Content of Expression
   1. Advocacy of Crime or Revolution
   2. Obscenity
   3. Symbolic Speech
   4. Dissent and Civil Disobedience
   5. Free Speech and Property Rights
D. Limitations on the Means of Expression
   1. The First Amendment and State Police Power.
   2. Government Regulation of Radio and Television
   3. The Right to Demonstrate
E. Freedom of Speech on the Campus
   1. Academic Freedom of the Instructor
   2. Student Rights and Freedom of Speech

Assignments:

A. Texts Required for the Course (all are paperbacks):

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TO ERIC AND ORGANIZATIONS OPERATING UNDER AGREEMENTS WITH THE U.S. OFFICE OF EDUCATION FURTHER REPRODUCTION OUTSIDE THE ERIC SYSTEM REQUIRES PERMISSION OF THE COPYRIGHT OWNER

1. Crisis at Columbia: Report of the Fact-Finding Commission Appointed to Investigate the Disturbances at Columbia University in April and May, 1968 (The Cox Commission Report) Vintage, 1968.
2. Fortas, Abe. Concerning Dissent and Civil Disobedience. Signet, 1968.
3. Haiman, Franklin S. Freedom of Speech: Issues and Cases. Random House, 1965.
4. Hunsaker, David M. Cases and Materials on Freedom of Speech. Selected Academic Readings. Simon & Schuster, Inc., 1970.

B. Written Assignments.
There will be one major paper and several "minor" papers (briefs) required for the course.
1. The major paper should be in the form of a case note or commentary on a recent case or series of cases concerning freedom of expression. Copies of legal articles using the case note and commentary method are available in the Reserve Section in the Library.
2. Students will also be expected to turn in five briefs of cases contained in the Hunsaker text. A sample brief is included in the Syllabus.

C. Oral Assignments:
Students will be expected to participate in class discussion. A significant portion of the final grade in this class will be based on your class participation.

Examinations: There will be one midterm examination and a final examination. These two examinations will comprise about 50 per cent of the final grade.

Index of Legal Research Materials:

A. Holdings in the Bradley Library.
1. Law Reviews and Journals
American Bar Association Journal (AM. B ASS'N J.)
American Journal of International Law (AM. J INT'L L.)
American Society of International Law Proceedings (AM. SOC. INT'L PROC.)
Banking Law Journal (BANK. L J.)
Harvard Law Review (HARV. L. REV.)
Illinois State Bar Association Journal (ILL. B ASS'N J.)
Journal of Broadcasting (J. BROADCASTING)
Journal of Criminal Law, Criminology and Police Science (J. CRIM. L.)
Journal of Law and Economics (J. L. & ECON.)
Labor Law Journal (LABOR L. J.)

Law and Contemporary Problems (L. & CONTEMP. PROB.)
Law and Society Review (L. & SOC. REV.)
Race Relations Law Reporter (RACE REL'NS L. REP.)

2. Legal Encyclopedias, Reporters and Statutes
American Jurisprudence, (1st & 2d ed.) (AM. JUR. ; AM. JUR. 2d)
Corpus Juris; Corpus Juris Secundum (CORP. JUR.; CORP. JUR. 2d)
Illinois Statutes Revised (ILL. STAT. REV.)
Supreme Court Reports, Lawyer's Edition (L.ED.; L. Ed.2d)
United States Code (U.S.C.)
United States Statutes at Large (STAT.)
United States Supreme Court Reports (U.S.)

B. Law Library, Peoria County Courthouse

As of April, 1970, the Law Library of the Peoria County Courthouse is open to the general public during normal business hours (9:00 a.m. to 5:00 p.m.) There follows a partial listing of the materials contained therein:

1. Reporters
American Law Reports Annotated, 1st, 2d and 3d Series (A.L.R.; ed, 3d)
Atlantic Reporter; Atlantic Second (A.; A 2d) (Contains decisions of the highest State Courts of Me., Vt., N.H., Conn., R.I., Pa., Md., N.J., Del.)
California Reporter (1959 to date) (Cal. Rptr.)
Federal Communications Commission Reports (F.C.C.)
Federal Reporter, 1st & 2d Series (F.: F.2d) (Cases of the Federal Circuit Courts of Appeal)
Federal Supplement (F. Supp.) (Cases of Federal District Courts)
Illinois Appellate Court Reports, 1st and 2d Series (Ill. App.; Ill. App. 2d)
New York Supplement, 1st & 2d Series (N.Y.S.; N.Y.S.2d) (All N.Y. Cases)
North Eastern Reporter, 1st & 2d Series (N.E.; N.E.2d) (Highest Courts of N.Y., Mass., Ohio, Ind., Ill.)
North Western Reporter, 1st & 2d. (N.W.; N.W.2d) (Highest Courts of N. Dak., Minn., Wis., Mich., S. Dak., Nebr., Iowa.)
Pacific Reporter, 1st & 2d Series. (P.; P. 2d) (Highest Courts of Wash., Idaho, Mont., Ore., Wyo., Calif., Nev., Utah, Colo., Kan., Ariz., N.Mex., Okla., Alaska, Hawaii.)
South Eastern Reporter, 1st & 2d Series (S.E.; S.E.2d) (Highest Courts of W.VA., Va., N.C., S.C., Ga.)
South Western Reporter, 1st & 2d Series (S.W.; S.W.2d) (Highest Courts of Mo., Ky., Ark., Tenn., Tex.)

Southern Reporter, 1st & 2d Series (So.; So.2d) (Highest Courts of La., Miss., Ala., Fla.)
Supreme Court Reporter (S.Ct.)
United States Court of Military Appeals (U.S.C.M.A.)

2. United States Statutory Materials
Statutes at Large
Congressional Clearing House Index
Federal Code Annotated
U.S. Congressional and Administrative News
United States Code Annotated
Shephard's Citators
Supreme Court Reporter Digest
Federal Digest
Federal Register
Monthly Catalogue of United States Publications
United States Law Week
Congressional Record
Code of Federal Regulations

3. Legal Periodicals. The Law Library contains many legal periodicals. Use the Index to Legal Periodicals (similar to the Reader's Guide) as a means of finding pertinent articles.

4. Guides to Legal Research. The following guides to legal research and legal citation have been placed on reserve in the Bradley library:
How to Use Shepard's Citations (Explanation of the Snepard's citator system, in finding the case and legislative history of reports and statutes, including subsequent citations (references).)
A Uniform System of Citation (Rules explaining means of citing legal materials, published by Columbia, Harvard, and U. Penn. Law Reviews and the Yale Law Journal)
The Living Law (Guide to using the legal materials of the Lawyer's Cooperative Publishing Company (Am. Jur., A. L.R. L.Ed.))
West's Law Finder (Guide to using publications of West Publishing Co., the West Key Number System. Regional Reporters, Corp, Jur. USCA. West Key Number Digests.)

Sample Brief:

Case: COX v. LOUISIANA
(COX II - No. 49, 1964 Term)
379 U.S. 559, 85 S. Ct. 476, 13 L.Ed.2d 487 (1965)

Facts: Appellant (Cox) led a group of 2,000 which paraded and demonstrated before a Louisiana State Courthouse, to protest what the demonstrators considered an "illegal" arrest of 23 students the previous day. They were told that they must demonstrate across the street from the Courthouse, which they did. The demonstration became loud, and there was considerable tension between spectators and demonstrators. The sheriff, believing that a breach of the peace was threatened, ordered the demonstrators to disperse. They refused. They were arrested and subsequently convicted under a Louisiana statute which forbade picketing and parading in or near a building housing a court of the State, with the "intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness or court officer in the discharge of his dutues . . . "

Issue:
1. Is the statute invalid on its face as an unjustified restriction of freedom of expression?
2. Is the statute invalid as applied to Cox, et al.?
3. Did the state show "intent" as required in the statute?
4. Is the statute unconstitutionally vague (What does "Near" mean?)
5. Did the dispersal order effective revoke the original grant of permission?

Decision: 1. No; 2. No. 3. No. 4. No. 5. No. Held: Conviction reversed.

Reason:
1. The statute is similar to a federal statute applying to federal courthouses, which was held to be constitutional. The State has a legitimate interest in protecting its judicial system from duress.
2. In the case of a narrowly drawn statute concerning the protection of the administration of justice (unlike the contempt power) a clear and present danger need not be shown.
3. The statute does not require a showingof specific intent. Defendants by their actions clearly were within the purview of the statute "intent to obstruct justice or influence discharge of duties."
4. The fact that "Near" is not precisely defined, does not render the statute void for vagueness. This is within the narrow limits of permitted discretion of law enforcement officials which the

Court has allowed in free speech cases.

5. However, Appelants were given permission to demonstrate in the place where they did, which was, in effect an administrative determination that they were not "near" the courthouse, in terms of the statue. The sheriff's order to disperse could not legally revoke that determination. This was an abuse of discretion, which, in the area of free expression, the Court will not allow. There was not showing of a change to violent behavior on the part of the crowd.

Hypothetical Problems for Class Discussion:

1. The World Journal, the major newspaper in the City of Argos, published a number of articles on a controversial criminal trial involving alleged underworld figures. One article purported to be a transcript of a telephone conversation between the defendant and a Syndicate leader, discussing the crime (sale of narcotics) with which the defendant was charged. The newspaper did not say where it had obtained the transcript, but many believe it was obtained from the District Attorney's office.

   Another article asserted that certain unnamed members of the jury had been "bought and paid for" by the Syndicate, and that the judge in the case knew this and was proceeding with the trial anyway.

   Another article, an editorial, charged that the judge was a tool of the Syndicate and that the defendant would never be convicted. The editorial stated further that unless the defendant was convicted, the townspeople should "take matters into their own hands." The editorial concluded that certain vigilant groups were ready "to ensure that justice was done."

   The day after these articles appeared in the Journal, the judge banned the public, including the news media, from the courtroom. He also issued a contempt order against the Journal for obstructing the course of justice and advocating civil anarchy. The Journal appealed the contempt order and asked the appellate court to allow the news media to continue to cover the trial. What result, and why?

2. A recent article in The Black Panther, the official organ of the Black Panther Party, by the Minister of Defense, stated that the number one priority which all party members must work for is the "immediate overthrow of the white honky regime," calling for the assassination of certain "pigs," including the Majority Leader of the U.S. House of Representatives, the Mayor of Chicago, the Governor of Georgia, and certain members of the Board of Directors of General Motors, Ford Motor Co., Standard Oil, and Bank of America. The article stated that assassinations and strategic acts of terrorism were the only means of achieving the new People's Constitution, proposed at a Party Convention in Philadelphia.

One week later, FBI agents arrested the Minister of Defense, charging him with violation of Section 2385 of Title 18 of the United States Code. The same week, Chicago police arrested two Black Panther Party members who were selling The Black Panther on a street corner, charging them with violation of Section 30-3 of Title 38, Ill. Rev. Stat.

Finally, the Illinois State Attorney General filed a motion in the Illinois District Court to permanently enjoin the publication, distribution and sale of The Black Panther anywhere in the State of Illinois.

Convictions were obtained against the Minister of Defense and the two Chicago Black Panthers. The injunction against the newspaper was granted by the trial court. All three cases are appealed. What result? in each?

3. Jones, a black candidate for the Georgia State Legislature, gave a speech to a largely black audience, attacking the Governor as "a racist pig." He told his audience that he was working for "the revolution," and for them to join him in bringing it about. He also said that the black man should refuse to fight in "the white man's war of imperialism," and that he supported Huey Newton's announced program of aid to the National Liberation Front of Vietnam, and other people's liberation movements. A newspaper covered the speech and printed the text the next day.

a. His opponent, a white States' Rightist, sought in court to have Jones disqualified from running for office, because "he has openly defied the Constitution and laws of this State as well as those of the federal government." What ruling should be made on this motion, and why?

b. Jones succeeded in getting elected to the State Legislature. When his turn came to be sworn in, the clerk of the House refused to administer the oath of office to him, acting pursuant to a House resolution passed earlier to deny him admittance. The resolution said in part that Jones, having made the campaign speech referred to above, could not honestly take the oath of office, which required him to uphold the State Constitution and Federal Constitution. Jones sued in federal district court, alleging a denial of his civil rights, citing Bond v. Floyd. What result on appeal?

4. Smith, a student at State University applied for a National Defense Student Loan. Section 1001 (f) (1) of the National Defense Education Act (NDEA) provides as follows:

(f) (1) No part of any funds appropriated or otherwise made available for expenditure under the authority of this Act shall be used to make payments or loans to any individual unless such individual has taken and subscribed to an oath or affirmation in the following form: "I do solemnly swear (or

affirm) that I bear true faith and allegiance to the United States of America and will support and defend the Constitution and the laws of the United States against all its enemies, foriegn and domestic."

Subsection (f) (4) provides further:

(4) (A) When any communist organization, as defined in paragraph (5) of section 3 of the Subversive Activities Control Act of 1950, is registered or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, it shall be unlawful for any member of such organization with knowledge or notice that such organization is so registered or that such order has become final (i) to make application for any payment or loan which is to be made from funds part or all of which are appropriated or otherwise made available for expenditure under the authority of this act, or (ii) to use or attempt to use any such payment or loan. (B) Whoever violates subparagraph (A) of this paragraph shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Paragraph (4) as amended by P.O. 87-835 makes it unlawful for any member of an organization registered or required to be registered as a Communist organization under the Subversive Activities Control Act of 1950, with knowledge or notice that such organization is registered or required to be registered, to apply for, or use, or attempt to use any National Defense Student Loan Funds.

Attached to the application form was a list of organizations labelled as subversive and required to be registered by the Subversive Activities Control Board. The list included Students for a Just Society (SJS), a Maoist student organization.

After receiving his first payment on the loan, Smith became involved in campus politics and joined the local chapter of SJS.

A campus regulation required that all campus organizations submit a list of their membership to the Dean's office. After SJS had been declared subversive, State University refused to allow it the use of any campus facilities. At the same time, they still required that SJS give the Dean's office its membership roster. SJS refused and continued to meet "unofficially" on its campus.

A student agent, planted by the FBI in the SJS chapter, gave a list of the membership to his superiors. Subsequently, State University (having been given the list by the FBI) suspended the officers of SJS for refusal to comply with the membership notification requirement.

Smith was notified by the Loan office that the remaining payments of his loan funds were cancelled and that he must

pay back the first payment immediately. In the meantime, the Federal Justice Department brought a criminal prosecution against Smith under (section) 1001 (f) (4) of the NDEA.

Smith and the officers of SJS consult you for legal advice and aid. (1) What advice would you give the officers and what actions would you take on their behalf? (2) What arguments would you make as Smith's defense counsel at the trial?

5. Brown, another student at State University, filled out an application for an NDEA loan, but refused to sign the oath, because he was a pacifist and opposed to the War in Vietnam. The Loan officer informed him that his loan application could not be processed unless and until he signed the oath. Brown filed suit in federal district court, naming the Department of Health, Education and Welfare, and State University as co-defendants. He sought to have a declaratory judgment against the constitutionality of Section 1001 (f) (1) of the NDEA, and asked for a court order directing the University to process the loan.

Brown, in all other respects was eligible for the Student Loan. What result on each of the issues raised?

6. Smutley operates a bookstore on Main Street, two blocks away from Central High School. He had placed in his large display window several posters sent to him by Porno, Inc. (a publishing company which specialized in lewd books) advertising their latest books. One of the posters said: Latest Release: Marilynn and Rover. The shocking story of a girl and a dog. Makes Terrese and Isabelle look like Mother Goose. This SINsational book you won't want to miss!!

Another display item was a large black and white poster from a recent sex movie, showing partial view of a man and woman engaged in sexual intercourse.

The Central High PTA was outraged at this recent display and complained to the City Council and the District Attorney. The next day, two policemen came to Smutley's store with a warrant for his arrest. They seized a number of books and posters in the store and took down the two posters in the window.

One of the policemen went into Smutley's storeroom, and found several canisters of movie film which later proved to contain movies of men and women fornicating and engaged in perverted sexual activity. Smutley denied that he rented or sold the films but said that a publishing company had sent them to him unsolicited earlier that month, and he had not even looked at them to see what they contained.

Smutley was charged with the selling and displaying of obscene pictures and books, including the motion pictures. Smutley's lawyer claimed protection under the First Amendment. No evidence was offered by the Prosecution that Smutley had

sold to minors. What result in the case?

An action was brought later against Porno, Inc. for (1) advertising obscene literature and (2) publishing obscene material. Porno, Inc. was found guilty by the jury in the trial court, and appealed to the State Supreme Court. What result on appeal?

7. Abel, a student at Mentor University, and active in the War Mobilization Committee, a student group against the Vietnam War, helped organize an anti-war rally, protesting the United States intervention into Cambodia. At the rally, a dummy, made in the likeness of President Nixon, was hoisted up on the platform. Abel had taken over the microphone and told the crowd, "If the imperialist United States doesn't get the hell out of Cambodia and Vietnam, here's what we should do to him!" With that, he poured kerosene on the Nixon dummy and set it on fire.

   Several members in the crowd at that point attempted to pull Abel and the burning dummy from the platform. A number of fistfights broke out, and police were called to disperse the crowd. Several students were injured, including one girl who was seriously burned when the dummy fell on her.

   A. Abel was arrested by the Mentor police for inciting a riot. Upon his conviction, his lawyer appealed. What result?

   B. A week later, Abel was arrested by Secret Service agents for violation of a federal statute which made it a crime to threaten the life of the President. Abel (1) denied that he had threatened the President's life and (2) asserted that his actions were protected by the First Amendment as a means of political protest. How should the court rule on these defenses?

   C. Abel was notified by the Dean's office that he was suspended from the University for holding a rally without prior approval from the Student Activities Office, and for violating campus safety regulations by starting a fire on campus. Abel decides to appeal the suspension and consults you for legal advice. What do you tell him?

   D. Bonnie Bystander, the girl who was burned when the flaming dummy fell on her, sues Abel for her damages, asserting gross negligence. Should Abel be held liable to Bonnie? Why or why not?

8. Dr. Tom Loory, a tenured Professor of Religious Studies at State College, conducted weekly meetings off campus of the Church of the Inner Mind, a "religious" organization which advocated the use of hallucinogenic drugs to achieve "spiritual union with the inner self."

   At a meeting held at Dr. Loory's home, police came to the door and found a number of the people there smoking marijuana and chanting unintelligible words. Police arrested Dr. Loory

and a number of others there for felonious possession of marijuana.

At Dr. Loory's trail his lawyer raised the defense of First Amendment protection under both the free speech and free exercise of religion clauses. Dr. Loory was convicted and appealed to the Supreme Court. How should the Court rule on the Constitutional issues raised in the lower court?

A week after his arrest, Dr. Loory was notified by the College Administration that his contract was revoked and that he was no longer employed by the college. Dr. Loory brings a suit against State College, asserting breach of contract. What result?

9. The Warrior, an off-campus "underground" student newspaper at Bartley University, recently published an editorial attacking the University President for deliberate and conscious discrimination against black students. The acts of discrimination charged were: (1) university sanction of off-campus housing which openly discriminated against Negroes; (2) University solicitation and acceptance of private scholarship funds which stipulated that scholarship recipients must be white students.

In addition, The Warrior charged that the President was a "slum lord," who owned many dilapidated buildings on the South side, and charged exorbitant rents for units which violated many City health and safety ordinances. In fact, the University President was only part owner of a luxurious apartment complex in a well-to-do neighborhood.

After the publication of the editorial, the President, who was privately negotiating with another college for a position there, was notified by the college that it was no longer interested in him.

The President demanded a retraction of both charges, which was refused by The Warrior student editors. Thereafter, the President brought a libel suit against the newspaper and editors, alleging defamation of character and damage to his reputation. What result on the libel suit?

10. A local folk-singing group, Peter, Paul and Melvin, whose repertoire consisted mainly of anti-war and other social protest songs, received permission from the City of Mossville to give a concert in Bartley Park. A Mossville city ordinance provides in part:

In order to maintain the peaceful and tranquil nature of the Mossville Parks and Recreational Areas, and to guarantee the peaceful enjoyment of these facilities by everyone, no sound or voice amplification devices shall be permitted in the parks and recreation areas.

Peter, Paul and Melvin set up their equipment in the Bartley Park Bandshell. The equipment consisted of two 100 watt elec-

tric guitar amplifiers, a 100 watt public address system with four loudspeakers, and electric organ and a set of drums.

As they began to perform, a Mossville squad car passed by. The police got out and told the performers to turn off the amplifiers or they would stop the concert. Peter, Paul and Melvin refused, showing the policement the signed permission they had received from the City Commissioner of Parks. The police arrested them, charging them with violation of the ordinance, and refusing to obey a police officer.

The group's lawyer at the trail challenged the constitutionality of the city ordinance, as being (1) vague; (2) overbroad; and (3) contrary to the rights protected by the First Amendment. How should the Court rule on each of these issues?

11. WXYZ, an educational television station recently broadcasted a "documentary" film on the 1970 civil disturbances in Metro City. The documentary included many scenes showing confrontations between citizens and police. There were closeups of two policement beating a woman on the ground with their nightsticks. There also were some interviews with newsmen who claimed that they had been beaten by policemen and had their film confiscated. The narrator of the documentary stated that there were reports that Largo Bosso, the Mayor of Metro City, had ordered the police to "get the news media." The narrator explained that Mayor Bosso had charged earlier that the news media had attempted to "smear" him in the Fall mayorality election. The Narrator concluded,
If these reports are true, the people of Metro City should take a long, hard look at their mayor, and at the Police Commissioner who ordered this harrassment of newsmen. It is not too late to get a recall election organized.

The next day, the Mayor asked WXYZ for equal time "to tell the people the true story," asserting that the documentary was another political smear. He also complained to the FCC, charging that WXYZ was in violation of Section 399 of Title 47, United States Code. WXYZ refused the Mayor's request. The Commissioner of the FCC has decided to hold a hearing on the matter.

You represent WXYZ at the FCC hearing. What issues will you raise on its behalf?

12. The Dop Chemical Company operates a plant in the city of Tempos. The plant is engaged in the manufacture of napalm and other weapons of chemical warfare, including a mild form of nerve gas, under contract to the federal government. Because of the nature of this operation, the plant and the surrounding area is under tight federal security, and admittance is restricted to cleared company personnel and members of the Department of Defense.

Students for Political Action, a left wing campus organization at Tempos University, decides to demonstrate against Dop for its complicity in the war and the manufacture of inhuman weapons. A large group of students marched out to the Dop plant with signs and pictures of napalmed babies. When they arrived, they were met by a small contingent of plant security guards who informed them that they were in a restricted area and to leave immediately. The students sat down just inside the main gate, chanting, "Hell no, we won't go!" and other anti-war slogans. The Chief of Security called the Tempos Police for reinforcements and the students were arrested for criminal trespass under both State and federal statutes. A federal District Court tried the cases and the students were convicted. Their appeal reaches the Supreme Court. Appellants cite Cox v. Louisiana and Brown v. Louisiana in support of their position. The Attorney General cites Adderley v. Florida. How should the Court decide?

THE EFFECTS OF VARIOUS METHODS OF TEACHING ABOUT FREEDOM OF SPEECH ON ATTITUDES ABOUT FREE SPEECH ISSUES

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Recently reported research indicates that lessons about freedom of speech seem to have a slightly liberalizing effect on students' attitudes about free speech issues.[1] However this research dealt only with lessons presented using the lecture/discussion method. As yet there is no research dealing with the effects of lessons about freedom of speech when taught using other teaching methods. Since the lecture/discussion method affords the opportunity for individual students to remain relatively uninvolved in class activities if they choose to do so, the present study was designed to determine if teaching techniques which demand varying amounts of involvement in class activities by students would result in different amounts of attitude change about free speech issues. Specifically, it was hypothesized that lessons which demand involvement by requiring each student to lead a short discussion about an assigned reading would result in a greater attitude change in a liberal direction than would lessons taught in the lecture/discussion fashion in which the instructor lectures and students participate in class discussion only if they choose to do so. Since attitude changes in the earlier study were not statistically significant, a second purpose of the present study was to determine if the changes observed in the earlier study, however slight they may have been, would again be exhibited by students who participated in the free speech lessons when compared to a control group.

Subjects

The subjects in the experiment consisted of members of four sections of the basic course in communication at Ohio University during the spring quarter of 1969. At the time the course was one of two from which students could choose to fulfill a graduation requirement, so the subjects were fairly representative of the student body of Ohio University.

The Instrument for Measuring Attitudes Toward Free Speech Issues

Subjects' attitudes were measured with a questionnaire designed by the experimenter (see Appendix A). It consisted of 25 statements about free speech issues. The subjects responded to each of the statements with ratings of from 1 to 5 to indicate their agreement or disagreement with each of the statements. Twelve of the items were worded so that a low rating indicated a permissive attitude and thirteen were worded so that a higher rating indicated a permissive attitude toward the free speech issue. The questionnaire was

scored so that most permissive responses received a score of five while least permissive responses received a score of one. Thus, the possible range of scores was from 25 to 125. The subjects' responses ranged from 60 to 123. The mean was 91.75 and the standard deviation was 14.50. The split-half reliability coefficient corrected with the Spearman-Brown formula was .89. Each of the twenty-five items correlated positively with overall test score. These test statistics were all computed using the pretest responses. Since the questionnaire requires an overt and direct response to a wide variety of issues related to freedom of speech, it was felt that a single score for each subject based on all of the items could be considered a valid reflection of the subject's attitude toward freedom of speech.

Methods

The design of the experiment was a modification of the Solomon Four-Group design.[2] The treatments are described in Table 1.

Table 1

THE TREATMENTS

Group	Pretest	Treatment	Posttest
1	Yes	Lecture by the instructor with discussions	Yes
2	Yes	Reports on readings by students with discussion	Yes
3	No	Lecture by the instructor with discussions	Yes
4	Yes	No lessons	Yes

Three of the sections received lessons about freedom of speech while the fourth section served as a control group which took both the pretest and the posttest but did not have the free speech lessons.

The number of subjects on which the analysis was based was the number in each section which took the pretest and the posttest. Subjects were randomly discarded to equalize the number of subjects in the groups.

The three sections taught by the experimenter were randomly assigned to the three experimental treatments. The fourth group was a randomly selected section of the introductory course which was tested at the same time as the experimental groups.

In the lecture/discussion sections the experimenter lectured and led the class discussion. The subjects were encouraged to read articles which had been placed in the reserve room at the library. In the report/discussion section each subject was required to lead the class for 10 minutes during which he presented a brief summary of an article he had read and led discussion on the topic of the reading. Subjects chose their reading assignments from a list provided by the instructor.[3] The investigator spoke minimally in the report/discussion classes.

All of the pretests were administered the first day of classes, during the spring quarter, 1969. The subjects who received the free speech lessons were all required to buy and read a text about freedom of speech.[4] During the fifth and sixth weeks of classes, three fifty-minute class periods were used for the lessons about freedom of speech. One class period was devoted to academic freedom; one was devoted to speech that endangers national security; and one was devoted to offensive communication and censorship. All of the lessons were informative in nature. On the class period immediately following the third class period, all subjects were again tested with the free speech attitude questionnaire and given a subject matter test over the contents of the discussions and the readings.

Results

The means and standard deviations for the four groups are found in Table 2.

The pretest means of the pretested group were almost identical. Analysis of variance indicated that there were no overall differences among the four posttest means. See Table 3.

The primary interest of the study was the assessment of differences between the two teaching methods so a t-test was computed despite the fact that no overall difference among the four means was found. The t-test indicated there was no significant difference between the posttest means for the pretested groups taught by the two different methods.

The second purpose of the present study was to determine if the differences noted in the earlier study would again be found. In the earlier study, all three of the sections which participated in free speech lessons had attitude shifts in a liberal direction.[5] The same thing occurred in the present study. As determined by using the binomial distribution, the change of all six posttest means differing from the pretest means in a given direction is

less than five in one hundred.[6]

Table 2

MEANS AND STANDARD DEVIATIONS FOR THE GROUPS

Group	Pretest N	Pretest Mean	Pretest s.d.	Posttest N	Posttest Mean	Posttest s.d.
Lecture/discussion	12	91.25	9.54	12	93.42	10.26
Report/discussion	12	91.50	25.16	12	98.25	15.13
Lecture/discussion	12	no pretest		12	94.33	13.99
Control group	12	92.00	11.92	12	88.33	16.14

Table 3

SUMMARY OF VARIANCE FOR DIFFERENCES AMONG MEAN POSTTEST SCORES FOR THE FOUR GROUPS

Source	Sum of Squares	df	Mean Square	F
Between groups	620.416	3	206.805	1.00
Within Groups	9,093.504	44	206.671	
Total	9,713.920	47		

Discussion

Although the four posttest means in the present study did not differ significantly from one another, the shifts of the means were all as would be expected. The lecture/discussion group that was not pretested responded slightly more permissively than did the pretested lecture/discussion group.[7]

Of major interest is the posttest mean of the report/discussion group. This group had the highest posttest mean. The posttest mean for the no-treatment group was lower than its pretest mean. This might logically be attributed to a regression effect toward the score of 75, the median score of the questionnaire's possible range of 25 to 125. All of the groups receiving free speech lessons of any kind indicated more permissive attitudes than did the control group.

In conclusion it appears that lessons about freedom of speech may be depended upon to change students' attitudes toward free speech issues slightly in a liberal direction. It further appears that the amount of student involvement and activity during those lessons might be an important factor in the amount of change elicited. In the present study, the greater student involvement and activity in the report/discussion classes resulted in greater change than in any of the other groups examined. An important limit of the present study was the fact that all of the experimental groups in the study were instructed by the investigator who was fully aware of the experimental hypotheses. Despite concerted attempts to control behavior that might bias results, one can never be sure that such control has been adequate. Therefore, future research dealing with effects of various methods of teaching about freedom of speech on free speech attitudes might reexamine the effects of the two methods used here with a "double-blind" approach in which the instructors as well as the students are unaware of the design of the experiment or the hypotheses being tested. Future research might also profitably direct its attention to the effects of other types of teaching techniques not examined in this study.

Appendix A

Name _____Age_____Sex_____Class_____
Date _____Section_____

Below are some statements concerning freedom of speech. On the line to the left of each statement, write a number from 1 to 5 to reflect how you feel about each statement. Be sure to respond to each statement. These numbers should have the following meanings:

1. I totally disagree with this statement.
2. I disagree more than I agree with this statement.
3. I don't know.
4. I agree more than I disagree with this statement.
5. I totally agree with this statement.

__*__ 1. Freedom of speech should be denied to those who abuse it.

__*__ 2. There is some literature that is obscene so censorship for the

public good is desirable.

_____ 3. Communists should have free speech guaranteed them in the United States.

_____ 4. Loyalty oaths are a serious abridgment of academic freedom.

_____ 5. The right to distribute racist, hate literature should be protected as an aspect of free speech.

_____ 6. Academic freedom should protect the right to discuss subversive ideas alien to American democracy.

__*__ 7. Freedom of speech should only be granted to loyal citizens.

__*__ 8. If some people find someone's speech offensive, that speech should not be guaranteed the protection of free speech.

__*__ 9. Free speech should be denied those who propose the restriction of free speech.

_____10. Atheists should be allowed to teach in public schools.

_____11. Censorship is a serious restriction on artistic freedom.

__*__12. People who only find fault without offering solutions are misusing their right to free speech.

_____13. It is reasonable to suspect the loyalty of a laywer who represents accused communists before a congressional committee.

_____14. The political beliefs of university faculty members should not be investigated.

__*__15. Publications describing positive aspects of homosexuality should be banned from newstands.

_____16. Communists should be allowed to teach in public schools under the same conditions as everyone else.

__*__17. Groups of persons who disagree with our form of government should be prohibited from holding public meetings.

__*__18. It should be illegal to speak against racial or religious groups.

_____19. Communist newspapers and literature should be available to anyone desiring them.

_____ 20. Without academic freedom, society would suffer greatly.

_____ 21. Our laws are too strict about obscene literature and films.

___*___ 22. There is generally little reason to hear minority opinions since they usually contribute little and only slow down decision making.

___*___ 23. Comic books and literature for children should be screened by a government agency before publication to decrease the amoung of objectionable material.

_____ 24. Government wire-tapping should be opposed.

_____ 25. It would be all right for junior high school age students to read Playboy magazine.

*To reflect a permissive attitude it is necessary to disagree with these items. Hence for these items a rating of 1 is converted to a 5 in scoring; 2 is converted to a score of 4; etc.

FOOTNOTES

[1]Charles M. Rossiter, Jr., "Teaching About Freedom of Speech in the Basic Course," 1969 Yearbook of the Freedom of Speech Committee of the Speech Association of America, eds. George P. Rice and Haig Bosmajian, pp. 56-61.

[2]D. T. Campbell, "Factors Relevant to the Validity of Experiments in Social Settings," Psychological Bulletin, 54 (July, 1957), pp. 297-312.

[3]The readings were all from textbooks that dealt with freedom of speech and were selected for their objective analyses of free speech issues. The selections were informative in nature, advocating neither a conservative nor liberal viewpoint. Milton R. Konvitz, "Loyalty Oaths and Guilt by Association," in M. Konvitz, Fundamental Liberties of a Free People, (Ithica, N.Y.: Cornell University Press, 1956), pp. 229-269, would be typical of the readings.

[4]Robert M. O'Neil, Free Speech: Responsible Communication Under Law, (New York: Bobbs-Merrill, Inc., 1966).

[5]Rossiter, p. 58.

[6]The method used is the sign test described in N. M. Downie and R. W. Heath, Basic Statistical Methods, (New York: Harper & Row, 1959), pp. 208-209. The probability was determined by using Pascal's triangle in Downie and Heath, pp. 106-107.

[7]William Brooks, "Effects of the Persuasive Message Upon Attitudes: A Methodological Comparison of an Offset Before-After Design with a Pretest-Posttest Design," Journal of Communication, 16 (September, 1966), pp. 180-188.

A FREEDOM OF SPEECH SURVEY OF STUDENT OPINION IN A BASIC SPEECH COURSE

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I

One of the four stated objectives for Speech 100, the basic course at Kent State reads: "To develop an understanding of the nature and role of speech communication in a free society." Departmental agreement upon this objective, one must assume, largely evolved from a socially conscious faculty because there is little data in the literature which suggest a need for the study of freedom of speech for the college student enrolled in the basic course.

Those of us who administer and teach the course have been guessing about the need, and have given little attention to the teaching of this objective. For the most part, we have left it up to the ingenuity of each individual teacher. Some instructors have required a supplementary text such as Robert O'Neil's Free Speech: Responsible Communication Under Law, or Franklyn Haiman's Freedom of Speech Issues and Cases in Freedom of Speech; others hoped that panels, symposia and speeches might consider such topics as censorship. Others have neglected the topic. Some hoped the "free speech" objective might be reached by an open atmosphere in the classroom, where the student is given freedom to speak on any subject.

In a pre-service training session for teachers of Speech 100 for Fall Term 1969, the writers asked the participants to help discover where their students stood on a number of statements concerning freedom of speech. The instrument (see Appendix A), obscurely titled FOS, contained 31 short statements to which the student might indicate that he Strongly Agrees (A), Agrees (a), is Neutral (N), Disagrees (d), or Strongly Disagrees (D). In the first or second period of the Fall Terms (September 29 or October 1, 1969) the survey was satisfactorily completed by 741 students, of whom 364 were males and 377 females.

II

Development of Instruments. The Likert-type scales used were developed from several sources. One source of items used was an informal study conducted by a graduate student and one of the writers at KSU the previous spring.[1] Several items were suggested by literature prepared by the American Civil Liberties Union. A number of items were inspired by recent campus events and from central ideas of student speeches. We attempted to include as many relevant items dealing with freedom of speech on the college

campus as possible without creating an overly long and complex instrument. A roughly equal number of items worded with a libertarian and non-libertarian bias were chosen.

After the data were collected, an item-analysis using the procedure described in Edwards[2] was performed. A random sample of 100 answer sheets was selected. These were sorted into quartiles, with the analysis being performed upon the upper and lower 25 percent. Scoring of sheets was accomplished by assigning values of one to five for each possible response. The values were summed for the thirty-one items. The scores could range from 31 to 155.

The item analysis that was performed was essentially a t-test on the upper and lower 25 percent subject score for each item. Eight items did not show significantly different responses between the upper and lower quartiles. There was greater agreement of responses on these items than on others. Items 4, 6, 7, 13, 16, 27, 29 should therefore be revised, or worded negatively rather than affirmatively or vice versa, replaced or deleted if this survey were to be undertaken again. However, some of these items contain provocative data on attitude differences.

A test-retest reliability coefficient was computed on data from 30 subjects. The retest was done some four weeks after the initial measure was taken. The Pearson-product-moment correlation was .831.

III

The results of the survey indicated a considerable range of opinion. Data for each item have been transformed into percentages of students who selected A, a, N, d, D and are included in Table I.* In addition, the data have been grouped for discussion under four broad areas: Censorship, Political Expression, Freedom in Academia, and Police Power.

Censorship. Opinion was evenly divided on statements pertaining to censorship. Approximately an equal number agreed and disagreed that "civil and religious leaders have an obligation to determine the kind of books and magazines sold to children," 10 percent were neutral. Slightly more than half of the 741 agreed with the networks' right to "take off the air any program they think will be offensive." Only about one-third agreed that the "government should suppress any movie, book or play that offensively characterizes any religious or racial group."

Political Expression. Seventy-nine percent agreed or agreed strongly that "anyone has the right to criticize or oppose government policy or officials," but when this statement was translated into a specific challenge to the government, not quite half indicated that "people who believe in overthrow of our government should have the right to speak." Moreover, 60 percent stated that

* i.e., Appendix A.

"persons who burn their draft cards should be punished," 61 percent believed that "government loans should be unavailable to students who participate in antigovernment demonstrations," and 68 percent were opposed to "disrespectful behavior toward the flag. The statement "persons who counsel draft resistance should be convicted of treason," however, apparently was too harsh because only 23 percent supported this statement and 30 percent were neutral.

Freedom in Academia. Student opinions toward freedom of expression on campus are provocative. Thirty-nine percent indicated agreement with the statement "controversial speakers before they appear on campus should be required to submit a copy of their speech to the administration." Many were favorable toward disciplinary action; 67 percent favored disciplinary action for students who disrupt classes and 65 percent preferred expulsion for students who occupy campus buildings. Sixty-nine percent agreed that "organizations which advocate 'shutting the university down' should lose their university charter." A lesser, yet sizeable number, 33 percent, were of the opinion that some persons should be prohibited from distributing persuasive literature in the dorms.

Students were almost evenly divided--39 percent agreed, 23 percent were neutral and 37 percent disagreed--with the statement "no work, however pornographic or obscene, should be banned from the campus library." Questions concerning strip tease events sponsored by campus organizations (such as was banned on Kent State University last year) and nudity in the university theatre (not as yet tried at KSU) split the respondents into two large bodies of pro-con opinion and left more than one-fourth in a neutral position. A similar pattern was evident concerning campus exhibition of "obscene, revolutionary or communist propaganda films."

Academic freedom for students and teachers in the speech classroom received large support. Most students did not object to faculty members commenting (in class) on controversial issues outside their subject fields. Most were of the opinion that students in speech classes should have absolute freedom to speak on any subject and only one quarter of the students were of the belief that "'four-letter words' should not be permitted in the speech class."

Police power. Thirty-seven percent of the students favored wiretapping, 61 percent backed the university's right to search dorm rooms when they suspect use of drugs, 40 percent okayed police use of informers to prevent campus disruptions, 61 percent would arrest hecklers who seriously disrupt a public meeting, 63 percent would have police stop a speaker who provokes a crowd with hostile remarks, and 53 percent want greater power for the police to search and seize suspected criminals.

IV

The data were also categorized by sex. The overall pattern of responses suggest that, in general, men and women hold quite similar attitudes toward the propositions. There appears to be a marked difference of response between the sexes on items 4, 11, 13, 14, 15, 20, 24, 28. Men students took a more extreme position than did women on several items. There seems to be a paradox in these responses. Twelve percent more men than women strongly agreed that "anyone has the right to criticize or oppose government agencies or officials," while 10 percent less women than men agreed that "persons who burn their draft cards should be punished." Furthermore, women took a less severe stand toward the issue, "demonstrators who occupy campus buildings should be expelled." It appears that men tend to accept some generalizations about protest while strongly rejecting specific forms of protest, while women consistently tend to take less extreme positions or to take them less frequently.

Twelve percent more men than women agree that police should use informers to help prevent campus disruptions. Also, more women again chose to take a less punitive stance, or remain neutral on the issue. It appears that women tend to take a less extreme stand and to be less likely to accept harsh or punitive positions. Two items in the survey (items 24 and 28) showed a marked sex difference in the responses. On these items women took a stronger negative position than men did toward nudity in the theatre and toward strip tease events on campus.

V

The results of the survey were presented to the instructors three weeks into the term. Some instructors discussed the results in terms of audience analysis, pointing out how items illustrated central ideas which provoked strong positive and negative reactions and that on other propositions a large part of the audience was undecided. The 31 statements also served another pedagogical function. Freedom of speech became for both the instructor and the student a set of propositions of value and attitude. The FOS thus served to fashion issues for speeches, panels, and symposiums.

The survey has a clear educative function. Systematic collection of data and reporting them back to the classroom emphasizes to the student that freedom of speech matters to those who have planned the curriculum of Speech 100. Some of the questions in the survey served a rhetorical function. One statement might serve to increase one's sensitivity to the confidential student-teacher relationship. It reads: "Instructors should not disclose anything a student said in class to prospective employers or government investigators unless the student requests him to do so."

The data challenge the student to careful analysis concerning the functions of speech in a free society. Furthermore, the Freedom of Speech Survey provided information supporting the need for an objective in the Speech 100 Teaching Guide "to develop an understanding of the nature and role of speech communication in a free society."

Appendix A

FREEDOM OF SPEECH SURVEY

N--Males-364, Females-377 Total-741

1. Civic and religious leaders have an obligation to determine the kind of books and magazines sold to children.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
male	7%	38%	10%	29%	16%
female	12%	36%	11%	28%	13%
total	9%	37%	10%	29%	15%

2. People who own TV and radio stations have every right to take off the air any program they think will be offensive.

male	18%	33%	11%	24%	13%
female	14%	37%	11%	26%	11%
total	16%	35%	11%	25%	12%

3. The government should suppress any movie, book or play that offensively characterizes any religious, or racial group.

male	13%	19%	13%	31%	24%
female	15%	23%	12%	34%	16%
total	14%	21%	12%	32%	20%

4. Anyone has the right to criticize or oppose government policy or officials.

male	50%	32%	6%	8%	4%
female	38%	38%	10%	11%	3%
total	44%	35%	9%	9%	4%

5. Faculty members have no right to comment on controversial issues outside their subject fields in the classroom.

male	4%	9%	13%	38%	36%
female	5%	8%	8%	43%	36%
total	4%	8%	10%	41%	36%

6. People who believe in the overthrow of our government should have the right to speak.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
male	16%	32%	20%	18%	14%
female	11%	38%	26%	17%	8%
total	13%	35%	23%	17%	11%

7. Students in speech classes should have absolute freedom to speak on any subject.

male	36%	37%	12%	12%	2%
female	39%	34%	14%	10%	2%
total	38%	36%	13%	11%	2%

8. Police are justified in stopping a speaker who provokes a crowd with hostile remarks.

male	24%	41%	16%	12%	7%
female	18%	44%	17%	15%	5%
total	21%	42%	17%	14%	6%

9. Controversial speakers before they appear on campus should be required to submit a copy of their speech to the administration.

male	13%	27%	17%	27%	16%
female	11%	26%	23%	28%	12%
total	12%	27%	20%	27%	14%

10. The police have every right to use wiretaps to listen in on private conversations when they feel some crime is involved.

male	16%	21%	13%	20%	29%
female	10%	26%	16%	24%	24%
total	13%	24%	14%	22%	26%

11. Persons who burn their draft cards should be punished.

male	39%	24%	14%	9%	13%
female	29%	28%	20%	13%	9%
total	34%	26%	17%	11%	11%

12. Disrespectful behavior toward the flag should be acceptable forms of protest.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
male	7%	12%	13%	22%	46%
female	7%	11%	14%	21%	47%
total	7%	12%	13%	22%	46%

13. Persons who disrupt classes should be subject to disciplinary action.

male	34%	47%	12%	4%	3%
female	32%	21%	22%	17%	7%
total	33%	34%	17%	11%	5%

14. Demonstrators who occupy campus buildings should be expelled.

male	42%	24%	16%	13%	5%
female	34%	31%	21%	10%	3%
total	38%	27%	19%	11%	4%

15. Instructors should not disclose anything a student said in class to prospective employers or government investigators unless the student requests him to do so.

male	41%	29%	18%	8%	3%
female	34%	31%	21%	10%	3%
total	38%	30%	20%	9%	3%

16. Organizations which advocate "shutting the university down" should lost their university charter.

male	40%	30%	18%	6%	5%
female	38%	30%	23%	5%	2%
total	39%	30%	21%	6%	4%

17. The university should pass a law forbidding peddlers of certain ideas from distributing their literature door to door in the residence halls.

male	12%	22%	22%	29%	15%
female	13%	19%	22%	33%	12%
total	13%	20%	22%	31%	13%

18. The speech teacher should express his personal opinion on controversial issues in the classroom.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
male	23%	35%	26%	13%	3%
female	20%	36%	27%	12%	5%
total	21%	26%	27%	12%	4%

19. The university has the right to search dorm rooms when they suspect students of being involved with drugs.

male	30%	31%	10%	11%	17%
female	30%	32%	10%	17%	11%
total	30%	31%	10%	14%	14%

20. Police should use informers to help prevent any campus disruptions.

male	10%	36%	24%	17%	13%
female	10%	24%	35%	19%	12%
total	10%	30%	30%	18%	13%

21. No work, however, pornographic or obscene, should be banned from the campus library.

male	21%	26%	22%	22%	9%
female	11%	21%	23%	28%	16%
total	16%	23%	23%	25%	12%

22. "Four letter words" should not be permitted in a speech class.

male	9%	18%	28%	27%	18%
female	12%	13%	24%	32%	17%
total	11%	16%	26%	29%	18%

23. Hecklers who seriously disrupt a public meeting should be subject to arrest for disturbing the peace.

male	18%	43%	22%	13%	3%
female	19%	44%	21%	14%	2%
total	18%	43%	22%	14%	3%

24. Strip tease events by student organizations should be outlawed by college policy.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
male	10%	19%	29%	28%	15%
female	25%	34%	27%	10%	4%
total	18%	26%	28%	19%	9%

25. Government loans should be unavailable to students who participate in antigovernment demonstrations.

male	35%	27%	13%	13%	12%
female	36%	25%	15%	11%	12%
total	35%	26%	14%	12%	12%

26. The University should prevent the showing of obscene, revolutionary or communist propaganda films on campus.

male	16%	17%	24%	28%	15%
female	17%	21%	25%	25%	12%
total	16%	19%	24%	27%	13%

27. Sponsors of campus publications should take full responsibility for anything published under their supervision.

male	27%	45%	15%	11%	2%
female	33%	42%	15%	7%	3%
total	30%	43%	15%	9%	3%

28. Nudity should be acceptable in a university theatre.

male	21%	28%	28%	14%	9%
female	6%	19%	31%	22%	22%
total	13%	24%	29%	18%	15%

29. Prayers and Bible reading should be rigidly avoided in public institutions.

male	6%	11%	30%	28%	24%
female	7%	8%	20%	34%	31%
total	7%	10%	25%	31%	28%

30. Persons who counsel draft resistance should be convicted of treason.

	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree
male	11%	18%	24%	24%	22%
female	7%	11%	36%	27%	20%
total	9%	14%	30%	25%	21%

31. Police should have greater power to search and seize suspected criminals.

male	20%	34%	22%	17%	8%
female	17%	35%	25%	14%	9%
total	18%	35%	24%	15%	8%

FOOTNOTES

[1]W. David Arnold and William Gorden constructed and tested two instruments: one on information gain and the other on shift of attitude toward items related to freedom of speech. The instruments compared a) classes which studied about freedom of speech with the aid of Robert O'Neil's text and presented speeches and symposiums on the subject area, b) classes which were exposed to items about freedom of speech by playing academic games on free speech created by Gorden and c) classes which received no treatment and were control subjects.

[2]Allen L. Edwards, Techniques of Attitude Scale Construction, Appleton-Century-Crofts, Inc., N. Y., 1957, pp. 149-156.

LONG-HAIRS, HARD HATS, HARD HEADS, AND FUZZY THINKING

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Militant whites, militant blacks, hippies, college students, construction workers--many groups in our society seem to be abandoning purposeful verbal discourse in favor of other forms of symbolic behavior. We do not really need court decisions or rhetoricians to discover for us that hair style and exotic or bizarre costume are forms of communication. While it is comforting to know that the First Amendment also protects symbolic speech, still no judge has explained--nor does anyone expect him to explain--why it is that more and more of our citizenry either participate in or attend seriously to the rhetorical behavior of our time, while ignoring or dismissing the verbal discourse as mere rhetoric. (The pejorative "mere" may be either implied or expressed.)

Has the use of language to persuade or to conciliate reached the end of an era? Are many forces within our society so polarized that they have already rejected or are about to reject efforts at conciliation? Traditionally, the rhetorical goal of persuasion carries inherently within it the implication that persuasion may ultimately be possible. It may well be that the blacks, the young, the revolutionaries, and others see the "establishment" as so implacable, the "system" as so entrenched, that persuasion is neither possible nor practical. Thus they have abandoned what Edward P. J. Corbett calls "the rhetoric of the open hand" in favor of "the rhetoric of the closed fist."[1] In other words, they have rejected "the kind of persuasive discourse that seeks to carry its point by reasoned, sustained, conciliatory discussion of the issues" and have adopted in its stead "the kind of persuasive activity that seeks to carry its point by non-rational, non-sequential, often non-verbal, frequently provocative means."[2]

To react to unpopular opinion of the sort Theodore Roosevelt characterized as representative of the "lunatic fringe" by feeling that suppression or repression is good for society's soul, is probably so normal a reaction that the constitutional guarantees against suppression are necessary in order to achieve a balance. Attempts at the suppression of ideas are as much a part of the heritage of western man as is the desire for freedom of expression. Inevitable the ideas we wish to repress are "theirs"; those for which we seek freedom, "ours." In a sense, the mutual existence of these two themes--repression and freedom--is necessary; analogously, some philosophers argue that evil exists in the world as a measure of and a means of defining good.

Do we really believe in free speech? This question has sociological, political, psychological, legalistic overtones; but for purposes of this paper, I shall ignore those--without intending to minimize their significance. In this paper, I hope to consider some of the pedagogical overtones of the question. Is our value system truly ready to cope with the challenge of free speech--and at what level? Does our educational process promote, encourage, and foster the development of free speech--and at what level? What should we, as teachers, be doing in light of the first two questions?

There seems to be increasing evidence that we, as a nation, do not understand the meaning and significance of the concept of free speech. To rely "more on coercive than on persuasive tactics"[3] seems to be characteristic of the long-hairs, hard hats, hard heads of our time--this, whether they be pro- or anti-establishment. When these groups speak in such terms as "non-negotiable demands," they are telling us that they have written off as unacceptable or unimportant any ideas but their own. This growing tendency toward limiting choices belies a willingness to permit, approve of, believe in, a free rhetoric. In some ways, we seem to be like the Athenians described by Thucydides:

> The ancient simplicity into which honour so largely entered was laughed down and disappeared; and society became divided into camps in which no man trusted his fellow . . . . In this contest the blunter wits were most successful. Apprehensive of their own deficiencies and of the cleverness of their antagonists, they feared to be worsted in debate . . . and so at once . . . had recourse to action.[4]

Indeed, in the suppression of unpopular opinion, fear plays an important part. When a close relative, on reading in the local press a description of the activities and ideas of some activists at my own university, telephones me out of honest concern for my life and personal safety, and suggests that "they ought to be suppressed," he is really telling me he is afraid of an idea. This emotional reaction to an idea denies the precepts of John Stuart Mill and rejects the validity of a democratic society.

Yet my relative, and, I suppose, most other Americans, would agree that free speech is an integral part of a free society. The Bryant and Wallace public speaking text indicates two assumptions relative to the values of public speaking in a democracy: "First is the assumption that democracy will not work unless there is general communication among men--a constant and effective interchange of both fact and opinion."[5] Second is the assumption "that if communication is widespread and <u>free</u>, knowledge will prevail over ignorance, and truth will win over falsehood."[6] At one level we would agree, then, with John Stuart Mill that "All silencing of discussion is an assumption of infallibility."[7]

Thus our expressed beliefs are in conflict with our behavior. As Gunnar Myrdal once observed, "the political creed of America is not satisfactorily effectuated in actual social life."[8] As a result, Myrdal saw our nation "continually struggling for its soul."[9] Some of our more disaffected, more alienated young see the theory-practice dichotomy as another example of the hyprocisy of "the ruling class."[10]

But it is not only those with strange hairdos or peculiar headgear who are disaffected. The "ruling class" is also estranged. The playwright Arthur Miller suggests:

> So the question . . . is whether it is possible for men of one specific life experience to open themselves to other men with very different life experiences. It is all right for ordinary citizens to prefer their own kind and to socialize with those who share their opinions . . . . But it is not permissible, indeed it is not possible to peacefully rule a country without sharing the hopes, fears, and experiences of an entire generation which lives in that country. That way lie repression and worse, the elaboration of schemes to limit the protest of that generation by legal means and finally by gunfire.[11]

Theoretically, then we are ready to accept the challenge of free speech. Putting our beliefs into practice, however, seems to be more difficult. We see at once a failure of and a challenge to the society when extremist groups like the SDS reject "the role of working within the traditional political structure of society."[12] What is the role of the educational process in this scheme? How is it that we have come so far from the time when Benjamin Franklin, in agreeing to the adoption of the constitution, could say: " . . . when you assemble a number of men to have the advantage of their joint wisdom, you inevitable assemble with those men all their prejudices . . . and their selfish views . . . . I consent . . . to this constitution because I expect no better, and because I am not sure it is not the best."[13]

Is it sufficient for our students to discuss the ideas of Socrates, Mill, Franklin, or Holmes? For them to be exposed to the challenging and inspiring concepts of the past is certainly an important part of their education. Is it enough? When even a few of our students reject the democratic process, do they not indicate a failure within the society or within the educational system? Could it be that they are saying that to be told about democracy is not enough? Perhaps they need to be shown; perhaps they need to experience the values of free speech.

I do not deny the place of courses or units on free speech; on the contrary, I laud the many efforts in that direction. What I am trying to say is that talking about free speech is not enough; students also need, and need

badly, an environment in which free speech is more than a cliche.

Children learn from the way they are treated. In effect, our children do, not as we say, but as we do. If we show that we value even the opinion with which we disagree, that we are willing to compromise, that our listening to an argument implies a willingness to change, our students may begin to feel, with Benjamin Franklin, that:

> Since it is no more in a man's power to think than to look like another, methinks all that should be expected from me is to keep my mind open to conviction, to hear patiently and examine attentively whatever is offered me for that end.[14]

While the attitudes of home and family are significant in the early development of attitudes toward free speech, the climate of classroom and campus also plays a part. Here the attitudes of instructors and administration must be examined. The setting up of arbitrary rules by dogmatic adults, who then praise the First Amendment during convocations and commencements, only reinforces student attitudes about adult hypocrisy. Labeling as extremists "those whom we do not personally like or whose opinions are unpopular"[15] is neither responsive to argument nor in line with democratic values regarding free speech.

The response to my second question seems to be that at the level of knowing what are the philosophical arguments for free speech, educators are probably doing a fair job. Where we seem to be failing is in putting our beliefs into practice.

The challenge to parents and educators is evident. If our society is to survive the current syndrome of long-hairs, hard hats, and hard heads being substituted for good argument and genuine efforts at persuasion and conciliation, we must seek ways to re-value verbal discourse. Learned Hand suggests:

> I believe that that community is already in process of dissolution where each man begins to eye his neighbor as a possible enemy, where non-conformity . . . is a mark of disaffection; where denunciation . . . takes the place of evidence; where faith in the eventual supremacy of reason has become so timid that we dare not enter our convictions in the open lists, to win or lose.[16]

There is a place for symbolic speech; we should not seek to suppress it any more than we should verbal discourse. But when symbolic speech seems to supplant verbal discourse out of a loss of faith in the power of words to heal and to persuade, our society is in danger.

To serve the cause of the First Amendment with our lips only is not enough. We must re-examine our behavior in light of our convictions; only then can we determine if behavior and belief are parallel lines that never meet, or if we do not only say what we mean, but we also mean what we say.

FOOTNOTES

[1]Edward P. J. Corbett, "The Rhetoric of the Open Hand and the Rhetoric of the Closed Fist," College Composition and Communication, 20 (December, 1969), 288-196.

[2]Ibid., p. 288.

[3]Ibid., p. 293.

[4]Thucydides, The Peloponnesian War, trans. by Crawley, (New York: Random House, 1951), p. 191.

[5]Donald C. Bryant and Karl R. Wallace, Fundamentals of Public Speaking (New York: Appleton-Century-Crofts, 1960), p. 7.

[6]Ibid., p. 8.

[7]John Stuart Mill, "Of the Liberty of Thought and Discussion," in On Liberty, in The College Survey of English Literature, Vol. II, ed. by B. J. Whiting, et al. (New York: Harcourt, Brace and Company, 1946), p. 464.

[8]Gunnar Myrdal, An American Dilemma (New York: Harper and Brothers, 1944), p. 3.

[9]Ibid., p. 4.

[10]This term was used on a television news broadcast on August 3, 1970, by an unidentified young lady, reading a statement on behalf of the Temple University Free Press.

[11]Arthur Miller, "The War Between Young and Old, or Why Willy Loman Can't Understand What's Happening," McCall's,97 (July, 1970), p. 32.

[12]Edgar Hoover, "A Study in Marxist Revolutionary Violence: Students for a Democratic Society, 1962--1969," Case and Comment, 75 (July--August, 1970), pp. 23-24.

[13]Benjamin Franklin, "On the Faults of the Constitution," The World's Great Speeches, ed. by Lewis Copeland (New York: Garden City Publishing Company, 1942), pp. 236-237.

[14]Letter from Benjamin Franklin to his parents. Quoted by Paul Leicester Ford, The Many-Sided Franklin (New York: The Century Company, 1899), p. 155.

[15]Hoover, op. cit., p. 36.

[16]Learned Hand, "A Plea for the Open Mind and Free Discussion," The Spirit of Liberty (New York: Knopf, 1953), p. 282.

ON FOOLING THE PEOPLE, WHETHER SOME, MOST OR ALL OF THE TIME: AN EXAMINATION OF THE PEOPLE'S RIGHT TO KNOW

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Whatever their purposes, and Levy[1] argued convincingly that they surely did not anticipate the social order which it produced, the writers of the First Amendment structured a vital part of our society by guaranteeing that the freedom of speech, press, assembly and petition would not be denied by Federal legislation. The most direct effect of these provisions was to enlarge the bounds of permissable behavior: citizens may legitimately express a wide latitude of opinions using a great range of communicative techniques. Any restriction of either manner of expression or content of messages is suspect on the criterion of constitutionality. But the counterpart of freedom of speech is the people's right of access to information. Mr. Justice Douglas interpreted the right to know as the major thrust of the First Amendment,[2] and Mr. Justice Frankfurter, in this context, defined democratic government as "the government which accepts in the fullest sense the responsibility to explain itself."[3]

The people's right to know is linked to freedom of speech by two basic democratic principles. First, the belief that truth emerges best from a free "marketplace" of ideas in which all viewpoints are presented presumes freedom for advocates of all persuasions to inform themselves and to speak. Second, the practice of allowing the people to change the personnel of the government at frequent intervals is defensible only if they have adequate information to make intelligent choices among candidates representing alternative philosophies and platforms. The electorate can be in effect disenfranchised by suppressing a particular viewpoint or by withholding specific items of information. Thus freedom of speech is conceptualized in terms of two foci: the right of individuals to express themselves and their right to have information upon which to base their opinions.

The limits of individual freedom of expression and the areas of legitimate control have been explored recently by O'Neil[4] and Haiman[5]. Recent events, including the Vice President's criticisms of "gaggles" of commentators who question Administration policy, charges of police suppression of the proponents of the Black Panther Party, groups who shouted down Presidential candidates during the 1968 election, street battles between demonstrators and anti-demonstrators, and unprecedented use of nudity and pornography in the arts, verify the relevancy and importance of these analyses. But even if people were allowed to express themselves about any topic in any manner that they chose, without the right to know they would still not have freedom of speech.

There is a sense in which speech is not free, even if it is not legally restricted, if vital items of information are concealed. For example, the people were not free to discuss the Manhatten project which developed the atomic bomb because great effort was expended to insure that they did not know of the project. And the issue is certainly not exclusively historical. The so-called "credibility gap" designates lack of confidence that the government is explaining itself completely, and numerous instances of governmental secrecy continue to alarm many citizens, particularly with reference to military commitments.

This paper is an analysis of one aspect of the freedom of speech: the people's right to know. The thesis is that freedom of speech is directly limited by any group which withholds information relevent to topics being discussed or which would be discussed if known about. Reflecting the author's judgment that government is both the agency witholding most information and is the agency which has the greatest responsibility to explain its actions to the people, the topic will be further limited to government suppression of information.

The purpose of this paper is academic, not polemic. Rather than assume a position and marshall supportive arguments, this paper presents the case for and against government control of information. This procedure seems advisable for several reasons. First, understanding both positions should precede a commitment to either. Second, obtaining a summary of both cases has classroom pedagogical advantages, discussed later in this paper. Third, the issues are complex, and this procedure seems to impose less distortion than would a polemic.

Government Control of Information

A "restless contradiction" exists between the constitution's guarantee of freedom of speech and its authorizing the government to withhold information. The people's right to know is counterbalanced by "the right of the President, in the absence of express provisions to the contrary, to decide what records of the executive department may be withheld and what disclosed."[6]

In recent years, this "executive privilege" was dramatically extended. Both Truman and Eisenhower gave Executive Orders empowering Federal employees other than the President to classify information. An estimated one million people were authorized to wield the Top Secret stamp in the Eisenhower administration.[7] Under these provisions, the government has 1) suppressed information about its activities; 2) released false and deliberately misleading information; and 3) created a system perpetuating these practices.

Examples of information control are readily available. President Eisenhower admitted that "in the diplomatic field it was routine practice

to deny responsibility for an embarrassing occurrence when there is even one per cent chance of being believed."[8] Accordingly, he denied any knowledge of spy-flights over the Soviet Union until the Russians produced a downed U-2 plane and its pilot. Secretary of State John Foster Dulles often tested public opinion--and confused the public--by releasing contradictory reports attributed to an unnamed source described only as a "high government official." He once told newsmen not to quote him but to report that the U. S. would defend the islands of Quemoy and Matsu in event of Chinese attack. After the public response was noted, Dulles authorized a similar "non-attributed" story denying that the islands would be defended.[9] President Kennedy suppressed information about the presence of missiles in Cuba until he had initiated his "quarantine"[10]--and deliberately lied to the people in the process.[11] President Johnson would not allow foreign news films showing civilian casualties due to U. S. bombing in North Vietnam to be shown in this country. Rather, the American public was told that civilian casualties were prevented by highly effective precision-bombing techniques.[12] Nelson Rockefeller accurately observed that "we live in an age when the word of a political leader seems to invite instant and general suspicion."[13] And well it might: Rockefeller's unequivocal reiteration of non-candidacy, prefaced by an appeal to be spared this sort of skepticism, was publicly repudiated a few weeks later.

Unhappily, not every case of information control is motivated by anything resembling the national interest. Partisan politics seem to be a sufficient cause of information control. When the press correctly learned that a high-ranking official (actually Senate Majority Leader Mike Mansfield) privately told President Johnson that he strongly disagreed with his conduct of the Vietnamese war although he would not attack him publicly, Johnson avoided the embarrassment of admitting formidible opposition within his own party by identifying newly-elected House Minority Leader Gerald Ford as the silent opponent. The fact of Mansfield's opposition and Democratic disunity was buried in partisan bickering.[14]

Although there is little disagreement about the fact of government suppression of information,[15] evaluations of the practice vary widely. For example, Wiggins suggested that the issue is that of secrecy or freedom, for the two are incompatible. If continued, he argues, deceptive handling of information will change the very nature of our government.[16] On the other hand, former Assistant Secretary of Defense Sylvester publicly admitted that he had lied in government pronouncements and defended the practice as being necessary for national security and, because of that, morally right.[17] It is instructive to consider the case made for and against information control.

The Case Against Government Control of Information

Those opposed to government control of information argue that it

threatens freedom and good government. Adequate information is considered a prerequisite of freedom. Perry observed that "whoever determines what alternatives shall be known to a man controls what the man shall choose from. He is deprived of freedom in proportion as he is denied access to any ideas, or is confined to any range of ideas short of the totality of relevant possibilities."[18] There is an obvious validity to this argument. If government suppresses information about a non-military means of coping with an international problem and then asks citizens to support military action, their freedom of self-determination has been compromised to the extent that they are not aware of the alternative. Wiggins suggested an inverse relationship: as secrecy increases, freedom decreases.[19]

Suppressing information results in an uninformed or misinformed public. Advocates of this position note five ways in which this saps the quality of government. First, secrecy serves as a cloak for corruption.

> One of the worst consequences of secrecy is the license it confers upon deceit . . . . When there are no independent means of verifying official accounts of public transactions, an invaluable check is removed. It then becomes relatively safe for authority to publish such a version of an event as lends the most luster to government, or the least discredit. The temptation to sugar-coat each disaster and gild every triumph will prove almost irresistible to officials who are secure against contradiction. Government then can manage the news to its tastes. It will speak with one voice and, however much that voice may err, there will be none to say it nay. [20]

The list of scandals and illegal activities by those in government is long, and information control procedures have allowed them to flourish. While ready access to information cannot be expected to eliminate corruption, some believe that removing official obstacles to the flow of information will limit clandestine activities and reduce their detrimental effects by exposing them earlier.[21]

In addition to providing a cover for corruption, discretionary control of information at least temporarily protects inefficient or bumbling administration. Rather than using the public as a resource in making the best decisions, government officials may try to convince the electorate that the official policies are best.[22] The difference is crucial: the thousands of information officers employed by the government constitute a propaganda force for the current administration, and the President has virtually unlimited access to the radio and TV networks. If, in addition to presenting their case forcefully, government officials suppress information which would contradict them, this is a matter for concern. "If the opinions of the public are to control the government, these opinions must not be controlled by the govern-

ment."[23] The most eloquent objection to government-in-secret was made by Senate Foreign Relations Committee chairman William Fulbright. Changing his long-standing policy of holding hearings off-camera, Fulbright insisted that the Administration explain its conduct of the Vietnamese war both to his committee and by means of television, to the American people. He hoped to force a change in Johnson's Vietnam policy "by putting that policy on public trial. In short, he intended to go over the President's head to the people."[24] The suggestion has been made that a monument be raised to Fulbright for this action, although there is some disagreement about whether it should be erected in Washington or Hanoi.

Suppression of important information threatens good government because it precludes the open discussion of issues out of which wise decisions come. This led Mr. Justice Douglas to warn that "The safety of the Republic lies in unlimited discourse."[25] In his study of propaganda, Terence Qualter judged that censorship of ideas poses a greater threat to democracy than propaganda because the inavailability of alternative points of view, rather than the persuasive presentation of one position, results in an unquestioning uniformity of opinion.[26]

Good government is precluded by an uninformed electorate because the people's judgment is, ultimately, final. Lacking information, judgments tend to be made on the basis of ignorance, rumor or prejudice:[27] the government chosen by such a constituency is not likely to be the best.[28]

Government control of information militates against good government by alienating the people. Regardless of the reasons why President Johnson withheld information, his doing so hurt his administration by destroying popular confidence in his official pronouncements.[29] Former President Truman observed that presidential power is, in essence, the power to persuade,[30] and a persuader with low credibility is severely handicapped. But in addition to the question of credibility, secrecy tends to divide an uninformed mass from an informed elite,[31] precluding development of the necessary public support for governmental policies[32] and developing dangerous polarizations among the people.

Analyzing the arguments advanced by opponents of government control of information, it becomes obvious that they implicitly endorse a particular concept of self-government. Two interpretations have been advanced: that of a democracy and that of a republic. Sidney Hook defined an absolute or direct democracy as "government of the whole people by the whole people." The prime analogy is that of a town meeting, at which every person discusses and votes on every issue.[33] Obviously the American government is too large to be run by town meetings, but those advocating this concept believe that means should be found to assure that the citizens exercise the primary decision-making responsibility. This concept is consistent with the practice of "government by publicity" in which mass communication and public opinion

polling serve as "twin technologies that seek to revive the Aristotelian concept of the citizen as firsthand spectator and participant in the marketplace of government."[34]

Many are not convinced that democracy is either practical or desirable. Implicitly supporting their arguments for government control of information is an interpretation of self-government as a republic, or a system in which citizens choose representatives who then rely on their own initiative in the formulation and execution of policy.[35] In a republic, "while the electors choose the ruler, they do not own any shares in him and they have no right to command him."[36] This concept is consistent with the Jeffersonian belief in a natural aristocracy on the basis of intellect. Those who accept this position tend to be those occupying positions of power and responsibility and who place "great confidence in their own judgment, with a correspondingly low estimate of the general run of people."[37]

The Case For Government Control of Information

Advocates of this position rely on three lines of argument. First, democracy is impractical in a large, complex society. Second, efficient administration of government necessitates the ability to control information. Third, requirements of national security demand information control.

The issue of the size and complexity of government and society is a major theme in the reasoning of those convinced that democracy is impractical. Representative John Moss complained that there is so much information about so many issues that it is difficult to obtain what is available about a particular topic.[38] This implies that the people are at best only partially informed about complicated issues. Further, the information they do have is likely to be that which is most accessable, not necessarily the most important for making good decisions.[39] On the other hand, Senator Mark Hatfield argued that government policy as well as logistics limits information accessibility. "Our leaders have taken the position that an issue is far too complicated for the people to understand even if full information is available."[40] The basic theory of democracy, that the people know best and that the majority of the people, if well-informed, will make sounder decisions than small groups of leaders or geniuses, was directly challenged by James Reston. "This is undoubtedly sound doctrine for sinking a sewer or building a bridge or school in a local community, but is it a practical way to conduct foreign policy?" He concluded that it is not.[41]

Walter Lippmann clearly rejected the democratic ideal as impractical. According to Lippmann, an unrecognized revolution in the Western democracies during World War I resulted in a "functional derangement of the relationship between the mass of the people and the government." In essence, the overextended democracies lost the power to govern without the support of public opinion. Deploring this development, Lippmann argued that government must

be freed from dependence on public opinion, for "the unhappy truth is that the prevailing public opinion has been destructively wrong at the critical junctures. The people have imposed a veto upon the judgments of informed and responsible officials . . . . Mass opinion . . . has shown itself to be a dangerous master of decisions when the stakes are life and death."[42]

The argument that efficient administration of government requires secrecy was presented by Robert Cutler, former Special Assistant to President Eisenhower on National Security matters. Cutler advocated that there by no publicity about a proposed course of action before the government decides what to do. He suggested that 1) arguing in the press the pros and cons of the options available to the government tends to disintegrate policy by contributing to a piecemeal approach to major decisions; 2) pre-decision secrecy does not violate democratic rights because nothing has actually happened until the decision is made; and 3) the President should be able to disregard the advice of some of his advisors without publicly disclosing the fact and thus embarrasing the advisors. Well publicized disputes within the Administration provide unfriendly nations a vantage from which to apply pressure against the government. After a decision is made and the policy implemented, Cutler urged continued discretionary suppression of information. His reasoning was based on the premise that national security programs are an inseparable whole. Bringing public attention to projects conducted in secret, particularly those with unhappy consequences or evidencing inept administration, would result in overattention and overcompensation, imbalancing the whole. He argued that foreign policy particularly would be distorted by piecemeal post hoc correctives. Cutler apparently realized that he had advocated complete suppression of information, and responded by arguing that free speech about foreign policy must prove its validity and usefulness to national survival if it is to be seriously considered in decisions about withholding information.[43] To say the least, this position represents a shift in the burden of proof with respect to free speech.

The government's right to control information vital to national security is generally conceded. President Kennedy's Press Secretary Pierre Salinger interpreted the First Amendment as not requiring full disclosure either to the press or to Congress. Aslinger reasoned that covert operations such as the Bay of Pigs invasion are necessary in the Cold War against an opponent who regularly engages in secret maneuvers, but prohibiting government control of information makes implementation of such tactics very difficult.[44]

A surprisingly frank statement of the right of government to lie in cases of national security was made by former Assistant Secretary of Defense Arthur Sylvester. To illustrate his point, Sylvester used a pressing ethical issue of the Kentucky frontier in 1804: whether a man captured by hostile Indians was justified in lying to conceal the presence of one of his children hiding nearby. The so-called Truthful Baptists said no; the Lying Baptists, yes. Sylvester aligned himself clearly with the Lying Baptists in this

situation, and claimed that it was comparable to that faced by government. He reasoned that national self-preservation takes precedence over truthfulness: "/citizens/ don't want their children surrendered to the savages merely so that the Government could boast it always told the truth, the whole truth, and nothing but the truth."[45]

Many who believe that government should suppress information at least some of the time are not willing to state their position as frankly as Sylvester and would not agree with Cutler's sweeping conclusions. But all of those endorsing this position seem to accept, implicity or explicity, the idea that government is too cumbersome to be administered by public opinion, that the best government is that which usually keeps its own counsel about its plans and which has a healthy appreciation for the demands of national security.

Analysis of the Cases For and Against Information Control

The arguments presented by both groups meet rough tests of proof: examples and authoritative opinion may be cited to substantiate them all. In addition, the cases are internally consistent if the basic, often unstated, tenets of the position are granted. The conflict of opinion must be understood on the basis of an analysis which goes beyond the claims for belief offered for individual contentions.

Those for and those against government control of information see the world through different eyes. Their affinity for certain arguments and antipathy for others is a function of their willingness to place confidence in the ability of the "common man" and their interpretation of the nature of self-government. For adherents of either position to understand those agreeing with the other side, they must be able to shift perspectives at least temporarily, and see the issues from the other orientation. In addition, an analysis of the communicative process suggests that this sort of role-taking is essential for good between-groups communication.[46]

Good government is important to both those advocating and those opposing information control. But they mean different things by good government. Those opposing suppression of information by the government identify good government as that which is most responsive and most accountable to the people, while government which is efficient and effective in implementing its policies is considered best by those favoring information control. The extent to which the former concept is practical and the latter desirable should be a theme in discussing the relative merits of each cause.

Advocates of both positions would agree that the tensions between the right to know and the government's need to suppress information should be resolved so as to achieve simultaneously three goals: individual liberty; good government; and national security. Those who would suppress information

do so in the name of national security; those who would not, invoke individual liberty as their criterion. But there are situations in which achieving national security must be at the price of individual liberty, or vice versa. The question is, in these situations, which should be preferred? The difference between the positions thus hinges on a value judgment about the relative importance of these two policy objectives.

Formally stated, the dilemma seems real. Those who would choose national security as the foremost objective reason that if the nation falls to an aggressor, individual liberty will be lost more surely and totally than under any conceivable security restrictions. On the other hand, those who would choose individual liberty as the primary goal of national policy argue that if security is achieved at the price of liberty, it scarcely matters if the tyrants are foreign or domestic.

But the statement of the dilemma is a semanticist's nightmare. Obviously, the class terms "security" and "liberty" are being used as if there were no differences among the phenomena within the categories. Certainly some liberties may be sacrificed for security, and security is not worth the loss of all liberties. But where do the tolerance limits of compromised freedom and security occur in specific situations? Although a topic by topic answer to this question lies outside the scope of this paper, a series of three questions indicates the people's right to know and the government's right to withhold information.

First, should any information ever be legitimately suppressed? Either an affirmative or negative answer to this question becomes the key to a Pandora's box of troublesome issues. Students answering this question find themselves qualifying their responses with the same "bureaucrat-ese" that they criticize government officials for using as a substitute for English. The discussion should focus on the distinguishing characteristics of those situations (if any) in which information control is and is not appropriate.

Second, who should decide whether a particular item of information should be released or suppressed? Giving discretionary powers with respect to withholding information to those who make policy decisions imposes an intolerable ethical dilemma. Discriminating between selfish and statesmanly motives for suppressing information is extremely difficult under the best of circumstances. The Chief Executive may be deprived of both the awesome power and responsibility of deciding when to lie to the people by appointing a special non-policy-making agency entrusted with these duties. But this raises other problems. What type of people would be best on such a committee? How can each person be confident that only that information which is essential for national security is being withheld? What correctives should be established in the event of poor decisions regarding information control?

Third, is there some practical way to distinguish between information which legitimately threatens the national interest and that which merely embarrasses the current administration? This is tougher than it looks because some will argue that anything which embarrasses the administration threatens the security of the country. For example, the alleged atrocities at My Lai by American troops were concealed for a number of reasons, one of which was the propaganda value of this information to the North Vietnamese. The question is, which is more damaging: the fact that the North Vietnamese ultimately found out about the massacre or that the American people were asked to make foreign policy decisions without this information?

Conclusion

This paper traced the interrelated nature of the freedom of speech and the people's right to know, discussing in some detail government suppression of information as a threat to freedom of speech. By summarizing the cases for and against government control of information, the paper served the scholarly function of providing the basis for informed and constructive discussion of the issue. An analysis of the case for each position indicated that they were separated by different interpretations of self-government (democracy; republic) and of good government (responsive to the people; efficient in implementing its programs with minimum discord) and by the goal of government policy considered of primary importance (individual liberty; national security).

This material may be used to provide students a perspective which will facilitate comprehension of readings in this area. Three questions were posed which have been found conducive to the kind of class discussion which stimulates interest in and sensitivity to the problems of free speech and information control. But the summaries of the cases for and against information control permits an alternative pedagogical technique: students may be assigned to defend each position in class activities using a format resembling a Senate hearing or Cabinet meeting. This seems particularly useful in demonstrating that each position is internally consistent but based on different premises. These class activities should develop, in addition to knowledge and sensitivity to the issue, a personal commitment by the students to the position which they judge to be best.

FOOTNOTES

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2. William O. Douglas, Freedom of the Mind (Garden City, N. Y.: Doubleday, 1964), p. 8.

3. Zechariah Chafee, Jr., Government and Mass Communication (Chicago: University of Chicago Press, two volumes, 1947), p. 752.

4. Robert M. O'Neil, Free Speech (New York: Bobbs-Merrill, 1966).

5. Franklyn Haiman, Freedom of Speech (New York: Random House, 1966).

6. James Russell Wiggins, Freedom or Secrecy (New York: Oxford U. Press, 1964), p. 67.

7. William J. Lederer, A Nation of Sheep (Greenwich, Conn.: Fawcett Publications, 1961), p. 86.

8. Alden H. Sypher, "You Can't Fool All of the People Even Some of the Time," Nation's Business, 54 (February, 1966), p. 32.

9. Lederer, p. 97.

10. Pierre Salinger, With Kennedy (Garden City, N. Y.: Doubleday, 1966), pp. 286-287.

11. Arthur Sylvester, "The Government Has the Right to Lie," Saturday Evening Post, 240 (November 18, 1967), p. 10.

12. "Snow Job," Nation, 203 (July 25, 1966), p. 66.

13. U. S. News and World Report, May 13, 1968, p. 36.

14. Rowland Evans and Robert Novak, Lyndon B. Johnson: The Exercise of Power (New York: The New American Library, 1966), pp. 552-553.

15. For further examples see Clark Mollenhoff, Washington Cover-up (Garden City, N. Y.: Doubleday, 1962).

16. Wiggins, p. 11.

17. Sylvester, p. 10.

18. Felix E. Oppenheim, Dimensions of Freedom (New York: St. Martin's Press, 1961), p. 83.

19. Wiggins, p. xi.

20. Ibid., p. vii.

21. Mollenhoff, p. 202.

22. Whether the best decisions are made by the largest possible number of people is, of course, debatable. The difference of opinion hinges in part on different definitions of "best," a point discussed below in connection with diverse concepts of "good" government. But arguments about decision-making processes suffer from a shortage of good research. But for an analysis of small group processes, such as within the administration, see Barry Collins and Harold Guetzkow, A Social Psychology of Group Processes for Decision-Making (New York: John Wiley, 1964).

23. John C. Livingston and Robert G. Thompson, The Consent of the Governed (New York: MacMillan, 1963), pp. 348-349.

24. Evans and Novak, p. 564.

25. Douglas, p. 34.

26. Terence H. Qualter, Propaganda and Psychological Warfare (New York: Random House, 1962), p. xiv.

27. For a description of communication behavior in ambiguous situations, in which people "attempt to construct a meaningful interpretation . . . by pooling their intellectual resources" (p. 17), see Tamotsu Shibutani, Improvised News (Indianapolis: Bobbs-Merrill, 1966). When information is lacking about important topics, the lacuna are filled by collective inferences: rumor.

28. William A. Robson, The Governors and the Governed (Baton Rouge: Louisiana State University Press, 1965), p. 36.

29. For example, see Bruce Ladd, Crises in Credibility (New York: New American Library, 1968); and William McGaffin and Erwin Knoll, Anything But the Truth: The Credibility Gap-How the News is Managed in Washington (New York: Putnam's Sons, 1968).

30. Richard E. Neustadt, Presidential Power (New York: The New American Library, 1964), p. 32.

31. Wiggins, p. 113.

32. Dan Lacy, Freedom and Communications (Urbana: University of Illinois Press, 1965), pp. 16-17.

33. Sidney Hook, "Democracy or Republic," in The Nature of Politics (New York: Avon Books, 1962), p. 463.

34. Douglass Cater, The Fourth Branch of Government (New York: Vintage Books, 1959), p. 10.

35. Hook, p. 463.

36. Walter Lippmann, The Public Philosophy (New York: Mentor Books, 1955), p. 46.

37. Chafee, p. 47.

38. Stuart W. Little, "Just Unbelievable," Saturday Review, 51 (February 10, 1968), p. 70.

39. Others extend this argument, suggesting that the volume of available information coupled with inappropriate criteria for news among journalists, rather than administrative suppression, is the major obstacle to informing the public about vital issues. See J. Edward Gerald, "Truth and Error--Journalism's Tournament of Reason," Quill, 57 (July, 1969), 12-15; Lacy, p. 18; and Ronald Lippitt, "Barriers to Communication: As Seen By a Social Psychologist," in Frederick T. C. Uyu, ed., Behavioral Sciences and The Mass Media (N. Y.: Russell Sage Foundation, 1968), pp. 189-195.

40. Little, p. 70.

41. James B. Reston, "The Press, The President and Foreign Policy," Foreign Affairs, 44 (July, 1966), pp. 553-559.

42. Lippmann, pp. 19-24.

43. Cater, pp. 113-116.

44. Salinger, p. 150.

45. Sylvester, p. 14.

46. For example, see the concepts of role-playing and role-taking in the process of covert rehearsal. J. Edward Hulett, Jr. "A Symbolic Interactionist Model of Human Communication," Audio-Visual Communication Review, 14 (Spring, 1966), 5-29.

HAIRCUTS AND SCHOOL EXPULSIONS

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When the football season opened in 1970 at the University of North Carolina, the teams, the students and the alumni in the stands were greeted by a cheerleader with clean, neat, but long hair. After the game, which the home team won, 13 alumni complained to the Athletic Department and some threatened to end their financial support unless the cheer leader was removed. The coach of the cheer leader squad issued a "cut or quit" ultimatum, and the cheerleader quit. His fellow cheerleaders, and fellow students took up his cause, and he was reinstated in time for the next home game.[1] A variant of this situation occurs in increasing frequency across the nation.

Disagreement over hair style is nothing new. Almost two thousand years ago, St. Paul raised the issue in his first epistle to the Corinthians: "Doth not even nature itself teach you that if a man have long hair it is a shame unto him? But if a woman have long hair, it is a glory to her; for her hair is given her for a covering."[2] This issue has been with us ever since, emerging whenever new styles of clothing, music, appearance, and even dance steps catch the attention of the young.

School administrators generally react adversely to new fads, and have expelled students when they first wore silk stockings, used lip rouge, rode in rumble seats, smoked cigarettes, joined fraternities, attended off-campus parties, or got married.[3] These expulsions in the past were generally upheld when contested in court, on the theory that admission to a public institution is a "privilege," not a right.[4] This is illustrated in the 1915 Supreme Court decision of Waugh v. Mississippi University.[5] There, the State of Mississippi prohibited all Greek Letter fraternities and Waugh, a member of the Kappa Sigma Fraternity, was denied admission to the Law School when he declined to sign a pledge that he had never been a fraternity man. Waugh argued that this denial of admission deprived him, without reason, of his "harmless pursuit of happiness" in violation of the Fourteenth Amendment. The Supreme Court turned him down because there was no "absolute or conditional right" to attend the University of Mississippi; and further, because "the legislature is in control of the college" and when it acts in the area of discipline, "it is not subject to any control by the courts."[6]

This state of the law could not and did not survive. The precedent-breaking decision came in 1961 when students at Alabama State College were summarily expelled when they protested segregation at the local court-house cafeteria by sitting at the counter until arrested. They filed suit for reinstatement, alleging that they had been denied a right to a due process hearing by the college administration. The federal trial judge denied their claim

on the theory that public institutions have a right to dismiss students "at any time for any reason without divulging the reason."[7] On appeal, the Court of Appeals reversed. Judge Rives wrote that the admitted fact that there is no constitutional right to attend a public college does not answer the question presented, because:

> One may not have a constitutional right to go to Bagdad, but the Government may not prohibit one from going there unless by means consonant with due process of law . . . .Similarly, a State cannot condition the granting of even a privilege upon the renunciation of the constitutional right to procedural due process.[8]

In short time, this holding that college students were entitled to constitutional due process in connection with an expulsion was extended and expanded to a holding that high school students could not be expelled from high school for the exercise of First Amendment rights, even on the school ground. When the Philadelphia, Mississippi Booker T. Washington High School opened in September of 1965, a number of the pupils arrived wearing "freedom buttons." These buttons, about an inch and a half in diameter, contained the words "One man one vote." The principal immediately called an assembly and prohibited the wearing of such buttons. When some pupils disobeyed his rule, they were expelled, after which they filed suit in the federal court for reinstatement. The Court of Appeals ruled that the students had a "right to communicate on a matter of vital public concern," and this right could not be abridged by the school authorities where the exercise of such First Amendment rights do not "materially and substantially" interfere with the requirements of appropriate discipline in the operation of the school. As there was no record of a "material and substantial" interference with school operations, the Court ordered the reinstatement of the suspended students.[9]

The Supreme Court adopted this test in an "armband" case. The Tinker children in Des Moines, Iowa wore black armbands to school one day to protest the war in Vietnam. The school authorities sent them home on two theories: first, that "schools are no place for demonstrations"; and second, for "fear of a disturbance." The Court rejected both these theories. First, it reasoned that wearing an armband was a form of "symbolic" speech, and that students do not "shed their constitutional rights to freedom of speech or expression at the school house gate." Second, it held that "fear or apprehension of disturbance" cannot overcome the right of free speech for:

> Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken that deviates from the views of another person may start an argument or cause a disturbance.

However, the Court held that schools may expel students for conduct which in fact "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." As there was no showing in the record that the armbands had in fact resulted in disruption, the Court ordered that the Tinker children be reinstated.[10]

The law in "haircut" cases, and there have been at least forty-four of[11] them in recent months, follows the law in the "armband" and "button" cases, i.e. there is a protected right to wear long hair absent some material disruption resulting from the hair-style. Typical of these decisions is Farrell v. Dallas Independent School District,[12] one of the earlier cases, and one referred to with approval by the Supreme Court in the Tinker armband opinion.

Farrell and two other high school boys were members of a musical group or combo known as "Sounds Unlimited." As members of this group, they were required by contract with their agent to wear "beatle style" haircuts. But as students at the W. W. Samuel High School in Dallas, they had to conform to a more traditional hair style. They had a conference with their agent and principal prior to school opening in September of 1966, and were told by the principal they had to get their hair cut if they expected to register as students. But instead of going to the barber shop, they went first to the recording studio--where they made an instant-hit recording derogatory to school authority--and then to the federal courts for judicial relief.

The Court of Appeals assumed that the hair style was a constitutionally protected form of expression, but nontheless ruled that the haircut requirement was permissible on the facts of the case. The Court referred to the evidence that at the W. W. Samuel High School, the long hair resulted in disruption. The principal testified that the "football guys at the school did not like long hair," and that they had taken matters into their own hands and cut the long hair of a school mate, that the long hair boys had been challenged to a fight, that a long haired boy was afraid to enter the boy's restroom, that several girls had objected to the obscenity used by the short haired boys against the long haired boys, and so on.

But the Court of Appeals made it abundantly clear that it was not issuing a blanket approval of school regulations against hair styles in any and all situations. Indeed, it discussed with approval the earlier decision in Zachery v. Brown[13] wherein a federal judge in Alabama had ordered the reinstatement of students to Jefferson State Junior College. They had been expelled, not because their Beatle type haircuts had any effect "upon the health, discipline, or decorum of the institution," but solely because the college administrators disliked "exotic hair styles." This, agreed the Court of Appeals, was an inadequate reason when constitutional rights were at stake. The subsequent decisions, with few aberrations, have followed this pattern.

Practically all courts agree that the right to wear long hair, sideburns, mustaches or beards is a right protected by the Constitution. Many

of the courts put this right on the First Amendment, i.e. as a method of expression. This seems clearly correct when black students, for example, wear mustaches as symbols of their masculinity, and to protest the institution of slavery when black men were dehumanized and emasculated.[14] It is more difficult to find a First Amendment form of expression when the students say they wear their hair long simply as a matter of taste,[15] or because they are members of a musical combo.[16] But, in the latter two situations, most courts agree that taste in hair style is part of the "liberty" protected by the Fourteenth Amendment from unreasonable or arbitrary state action. The Court of Appeals for the First Circuit, for example, ruled that "the Constitution protects such uniquely personal aspects of one's life as the length of his hair," for "liberty" would be "an incomplete protection if it encompasses only the right to do momentous acts, leaving the state free to interfere with those personal aspects of our lives which have no direct bearing on the ability of others to enjoy their liberty."[17]

Only a few judges do not recognize that the Constitution gives some protection to students who are expelled for hair styles. One is Chief Judge Lawrence of the Southern District of Georgia, and his reaction is understandable. He had spent some time working out a plan for the integration of the school system in Wheeler County, Georgia, and then, in his words, "all this is suddenly jeopardized by a lilliput of a lawsuit." Three of the Black students newly admitted to the formerly white school were expelled when they refused to shave their mustaches. Although the good judge admitted that there were decisions to the contrary, he said flatly that "I have no intention of becoming a tonsorial or sartorial consultant" to school boards. He dismissed the suit with regret that the three plaintiffs "apparently place their right to go to school with hair above their lips above getting an education."[18]

Judge Dumbauld in Pittsburg, Pennsylvania is another of the handful of judges who find no Constitutional protection in the right to go to school with long hair or a facial adornment. He does insist, however, that all school regulations must be reasonable, but agreed with the school board that an anti-mustache regulation met this test because a minority of students, unable to compete in the "face race," might suffer psychological detriment. In the particular situation, however, he ordered that the expelled student be reinstated because his "labial hirsute accresence" was not a cultivated mustache but rather merely a natural growth, "de minimus and practically imperceptible."[19]

The courts are in agreement that the school authorities have a "substantial burden of justification" when they seek to curb the Constitutional right to wear distinctive hair styles or face adornment; and most courts have held that this burden is met by a showing that the long hair directly resulted in an atmosphere of turmoil and disruption substantially interfering with the educational processes of the school.[20] This view is not unanimous. Judge Wyzanski in Boston wrote that "it is absurd to punish a person because

his neighbors have no self-control and cannot refrain from violence."[21] Chief Judge Johnson of the Federal Court in Alabama ordered a boy re-enrolled in the Wetumpka High School on the theory that the exercise of a constitutional right "will produce a violent reaction on the part of those who would deprive one of the exercise of that constitutional right."[22] And Chief Judge Tuttle of the Court of Appeals for the Fifth Circuit dissented from the holding that the long haired boys could be expelled from the Dallas High School because the "short hair guys" beat them up. He reasoned that "It is these acts that should be prohibited, not the expressions of individuality by the suspended students."[23]

The Courts are also in agreement that the school authorities may not suspend or expel students merely because they fear or anticipate turmoil and disruption. Many of the lower judges quote the Supreme Court decision in the Tinker armband case that:

> Any departure from absolute regimentation may cause trouble . . . . But our Constitution says we must take this risk; and our history says that it is this sort of hazardous freedom--this kind of openess--that is the basis of our national strength, and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious society.

The courts also agree that there is no justification for the expulsions merely because the administrators consider the hair styling "exotic" or "bizarre," or because the school "dress codes" were adopted by large student majorities. When a Colfax, Iowa high school girl was expelled because her hair fell more than the width of one finger above her eye-brows, Federal Judge Hanson wrote that the field of female coiffure "is one of shifting sand trodden only by the most resolute of men" and that he undertook "to comb the tangled roots of this hairy issue" with some trepidation as "fads constantly come and go as the pendulum unceasingly swings from extreme to extreme."[24] Judge Wyzanski seemed to approve of the individual hair fashions with his comment that "from different tones comes the best tune," and his references to Samson, Lincoln, "The Beatles" and Albert Einstein.[25] District Judge Singleton indignantly ordered the reinstatment of a bearded student with the comment that "the democratization of American life has not come to the point where every whim of the majority may be enacted into a mandate for all to follow. If so, then the Bill of Rights is for naught."[26] Only Chief Judge Frank Wilson of the United States District Court in Tennessee upheld a school expulsion because of "taste"; and he probably had tongue in cheek when he wrote that "in these days of growing environmental concern any court denying that aesthetic considerations may form the basis for public regulation would doubtless find itself swimming against the current in very murky legal waters."[27]

The courts are also in general agreement that they should not refuse to order readmission of the expelled student because the student "broke a school rule," and his readmission by court order would undermine school authority. Judge James Doyle gave the first of many similar answers to this contention when he wrote that "if the (haircut) regulation is fairly found to violate the Constitution, responsibility for these consequences rests with the agency which promulgated the regulation."[28] Judge Johnson added that "such an argument can be applied to any school rule, and, if accepted, would eliminate all student rights."[29] Nor do the courts accept the related proposition, often advanced by school authorities, that one of the purposes of education is to teach discipline. The federal court in Iowa rejected the argument that the hair rule should be supported because it "promotes good citizenship by teaching respect for authority and instilling discipline." The judge wrote that "if such an argument were accepted, then any rule, no matter how arbitrary, capricious or abhorrent to our democratic process could be justified by school officials."[30]

Nor do the courts accept the argument, often advanced, that short haircut rules are proper because long hair on a boy is inherently dirty and unhealthy, or dangerous when worn in science courses. Federal Judge Neville answered this when he pointed out that most of the girls in the Little Falls, Minnesota High School had hair as long or longer than the expelled boy, that his hair was as clean and neat as theirs, that the boy took no dangerous "shop courses," and if he ever did, he could wear a protective device.[31]

Nor do the courts agree that there is a correlation between "good grooming" and academic success, or that the boys will do better in school if they will but cut their hair. In most of the cases, the boys are quite bright, and stand high in their class. In one of the first cases to reach the courts, the expelled student had attained the rank of Eagle Scout, stood in the upper ten percent in the nation on his college entrance examination, and was the leading candidate for president of his college class. The court even suggested that it was the prospect of a young man with a page-boy haircut serving as president of his class that probably "triggered" the expulsion.[32]

The Courts have rejected the concept that "eccentric hair styling is a reliable signal of perverse behavior."[33] Thus, when the San Jacinto Junior College in Texas excluded a bearded student because beards are the "badge of hippies" and hippies cause "campus riots and demonstrations," Federal Judge Singleton replied that in his court's chambers were portraits of six great jurists--Moses, Justinian, Solon, Coke, Marshall and Holmes, all bearded.[34]

The Courts are divided--one to one--on whether or not a haircut regulation is justified by the asserted economic needs of its general student body. The issue first arose when three students entered a beard growing contest sponsored (most improvidently, it would appear) by the Maine Voca-

tional Technical Institute. When the contest ended, they kept their beards and were expelled. The Institute justified the expulsion on the theory that a neat appearance and good grooming of the student body enhanced the impact of the school and its students among prospective employers recruiting on the campus. The Court held that the anti-beard attitude "of industry representatives" recruiting on campus supplied the "substantial burden of justification" necessary to sustain the "clean shave" rule.[35] But when the same justification was offered in a similar situation by the Chadron State College (training teachers in Nebraska) the Court replied that to accept this justification "is to accept the theory that the exercise of constitutional rights is governed by the prejudices and biases of others, thus negativing fifteen years of constitutional law developed since Brown v. Board of Education" (referring to the famous Supreme Court decision which declared school segregation to be unconstitutional).[36]

Finally, the court gave almost no notice when the school authorities at one school contended that since both boys and girls wore slacks and sweaters, a haircut rule for boys was necessary so the "teachers could easily distinguish the boys from the girls and thus avoid difficulties which could arise if some unruly or ill-mannered or malicious-minded boy entered a girl's wash-room."[37]

In summary, the courts in the absence of actual disruption, protect the right of students to wear hair styles of their own choice in order to provide "some breathing space for the individual into which the government may not intrude," and to preserve "the vitality of our traditional concepts of personality and individuality."[38] They do the same when it comes to choice of attire. But although a school board cannot ban the wearing of slacks by girls under any and all conditions, it may ban the wearing of bell-bottomed slacks by students who ride bicycles (in the interest of safety) and it may ban the wearing of slacks with small bells attached to the bottom (in the interest of order).[39] Similarly, a school board may require short hair when short hair is necessary or appropriate to some particular school function or purpose. The issue came up in Little Rock, Arkansas when the music director at the Forrest Heights Junior High told a boy he would either have to cut his hair or get out of the marching band. Chief Judge Henley supported this ultimatum. He reasoned that a dress or appearance rule that might be unreasonable or arbitrary in connection with general attendance at the school might well be relevant and proper if limited to certain school programs; and that the school band was such a program. He wrote that in a school band:

> Uniformity is the requirement and conformity is the watchword. The students wear similar uniforms, they march in step, they lift their instruments simultaneously . . . . Whatever distracts the attention of the audience from the band as a whole to a non-conforming individual musician militates against the band in the effectiveness of its performance.

Judge Henley reasoned that if the boy in this case could wear his hair long to protest the war in Vietnam, other band members would have equal rights to sprinkle ashes on their uniforms to protest racial or economic discrimination; while yet other band members would have their rights to appear "clad partially in an Indian costume" to protest American mistreatment of the Indians. What then, he concludes, would be the effect on the band?[40]

This issue of special purpose or function has also come up in connection with participation in the school athletic programs; and the two judges who have ruled on this matter were as far apart philosophically as they were geographically. In California, a number of high school athletes filed a suit protesting the short haircut regulation; and the coaches sought to justify it with evidence that long hair could adversely affect performance in certain track events, wrestling, gymnastics, and swimming. Moreover, added the coaches, such regulations are a legitimate means "of building team morale, discipline and team spirit." Judge George Harris brushed most of this aside with his comment that the issue did not approximate "constitutional proportions," and upheld the regulations because:

> In these parlous, troubled times when discipline in certain quarters appears to be an ugly word, it should not be considered unreasonable nor regarded as an impingement of constitutional prerogatives, to require plaintiffs to bring themselves within the spirit, purpose and intendments of the questioned rule.[41]

Meanwhile, on the east coast, the tennis players brought a suit challenging the short haircut requirement at the Brattleboro Union High School in Vermont. There was no question that their long hair did not adversely affect their performance, for they were ranked one, two and three on the tennis team (and almost equally high in their academic standings). Chief Judge Leddy pointed out that under the existing athletic code, "Billy Kidd, the world famous skier, would be unable to make the ski team. Joe Pepitone and Ken Harrelson, two colorful and popular major league ball players, would be unable to make the baseball team. Joe Namath would be barred from the football team and Ron Hill, who won the Boston Marathon, would not even be permitted to try out for the track team." The other justifications offered by the school authorities to support the rule were discipline, conformity and uniformity; and Judge Leddy found the concept of discipline for the sake of discipline, and conformity per se "frightening and dangerous" when applied to hair style. "The cut of one's hair," he wrote, "is one of the most visible examples of personality, shadowed with political, philosophical and ideological overtones," and as such must be afforded the protection given to these underlying beliefs.[42]

To those in the elder and middle generations, the haircut controversy is a tempest of tea-pot dimensions. But to many of the young it is the fringe

on the top of the age old struggle to be one's self.

Looking alike promotes acting alike and thinking alike. It was for this reason that Hitler's Germany, Mussolini's Italy, and the Emporer's Japan clad all students in the self-same uniform. It is for this reason that the Red Guards of China now administer "Pro-Peking" haircuts to one and sundry; and it is for this reason that the Government of South Vietnam turned the troops loose with bayonettes to crop the long haired students on the streets of Saigon.

But our theory of government, and of individual worth, is different. The Supreme Court reminds us that here, "state-operated schools may not be enclaves of totalitarianism,"[43] and that "We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes."[44]

A student almost by definition is immature, and his acts will often be immature, sometimes offensive to his elders. But it is better that he express himself childishly than not at all. This is the very process of learning.

FOOTNOTES

[1]University of North Carolina, Daily Tar Heel, October 9, 1970, p. 1, col. 1.

[2] 1 Cor. 11:14-15 But Paul quickly added that "if any man seem to be contentious, we have no such custom, neither the churches of God." 1 Cor. 11:16.

[3]The cases are collected and discussed in Pollitt, "Dime Store Demonstrations," Duke Law Journal, 315 (1960), 347 ff.

[4]In Hamilton v. University of California, 293 U.S. 245 (1934) the Supreme Court rejected the argument that students at the University of California could accept the free education offered by the state and at the same time insist that they be excluded from ROTC training upon grounds of religious conscientious objections to war.

[5]237 U.S. 589 (1915).

[6]237 U.S. at 596.

[7]In 1957 Harvard Professor Warren Seavey studied the cases in this area and found it "shocking" that the courts would permit officials of state educational institutions to expel students without the due process rights "given to a pickpocket." Seavey, "Dismissal of Students," 70 Harvard Law Review,1406 (1957).

[8]Dixon v. Alabama State Bd. of Educ., 294 F. 2d 150 (5th Cir. 1961), cert. den., 368 U.S. 930 (1961).

[9]Burnside v. Byars, 363 F. 2d 744 (5th Cir. 1966). On the same day, in another case, the Court of Appeals ruled that students at a different Mississippi school could be suspended for wearing the self-same buttons, because in their school there was a record of "substantial and material" interference resulting from the wearing of the buttons. Blackwell v. Issaquena County Board of Education, 363 F. 2d 749 (5th Cir. 1966).

[10]Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969). In subsequent cases, the federal courts have upheld the right to wear protest armbands in the absence of a material and substantial interference with the operation of the school. Compare Aguirre v. Tahoka Independent School District, 311 F. Supp. 664 (N.D. Texas, 1970) with Butts v. Dallas Independent School District, 306 F. Supp. 488 (N.D. Texas 1969).

[11]Upholding the right of students (or teachers) to wear long hair, mustaches, sideburns or beards are two United States Courts of Appeals: Breen v. Kahl, 419 F. 2d 1034 (7th Cir. 1969) and Richards v. Thurston, 424 F. 2d 1281 (1st Cir. 1970); three state court decisions: Scott v. Board of Education, Union Free School District, 305 N.Y.S. 2d 601 (1969); Meyers v. Arcata Union High School District, 75 Cal. Rptr. 68 (1969); and Finot v. Pasadena City Board of Education, 58 Cal. Rept. 520 (1967); and sixteen decisions by the United States District Courts: Breen v. Kahl, 296 F. Supp. 702 (W.D. Wis. 1969); Zachry v. Brown, 299 F. Supp. 1360 (M.D. Ala. 1967); Griffin v. Tatum, 300 F. Supp. 60 (M.D. Ala. 1969); Lucia v. Duggan, 303 F. Supp. 112 (D. Mass. 1969); Braxton v. Board of Public Instruction of Duval Co., Fla., 303 F. Supp. 958 (M.D. Fla., 1969); Richards v. Thurston, 304 F. Supp. 499 (D. Mass. 1969); Westley v. Rossi, 305 F. Supp. 706 (D. Minn. 1969); Calbillo v. San Jacinto Junior College, 305 F. Supp. 857 (S.D. Tex. 1969); Olff v. East Side Union High School District, 305 F. Supp. 557 (N.D. Calif. 1969); Sims v. Colfax Community School District, 307 F. Supp. 485 (S.D. Iowa 1970); Crossen v. Fatsi, 309 F. Supp. 114 (D. Conn. 1970); Cash v. Hoch, 309 F. Supp. 346 (W.D. Wis. 1970); Reichenberg v. Nelson, 310 F. Supp. 248 (D. Neb. 1970); Dunham v. Pulsifer, 312 F. Supp. 411 (D. Ver. 1970); Alexander v. Thompson, 313 F. Supp. 1389 (D.C. Calif. 1970).

Upholding the right of the school authorities to expel the students because of the particular factual situation are three federal Courts of Appeal: Farrell v. Dallas Independent School District, 392 F. 2d 697 (5th Cir. 1968); Davis v. Firment, 408 F. 2d 1085 (5th Cir. 1969); Jackson v. Dorrier, 424 F. 2d 213 (6th Cir. 1970); and King v. Saddleback Junior College District, 425 F. 2d 426 (9th Cir. 1970); two state courts: Leonard v. School Committee of Attleboro, 349 Mass. 704, 212 N. E. 2d 468 (1965) (a pre-Tinker decision), and Akin v. Board of Education of Riverside Unified Sch. Dist., 68 Cal. Rept. 557 (1968); and seventeen decisions by the federal district courts: Davis v. Firment, 269 F. Supp. 524; Crews v. Cloncs, 303 F. Supp. 1370 (S.D. Ind-

iana, 1969); Stevenson v. Wheeler County Board of Education, 306 F. Supp. 95 (S.D. Georgia, 1969); Farrell v. Smith, 310 F. Supp. 732 (D. Maine, 1970); Brownlee v. Bradley County, 311 F. Supp. 1360 (E.D. Tenn. 1970); Corley v. Daunhauer, 312 F. Supp. 811 (E.D. Ark. 1970); Gfell v. Rickelman, 313 F. Supp. 364 (N.D. Ohio, 1970); Giangreco v. Center School District, 313 F. Supp. 776 (W.D. Mo. 1969); Livingston v. Swanquist, 314 F. Supp. 1 (N.D. Ill. 1970); Lovelace v. Leechburg Area School District, 310 F. Supp. 579 (W.D. Penn. 1970); Brick v. Board of Education, Sch. District No. 1, Denver, Col., 305 F. Supp. 1316 (D. Col. 1969); Neuhaus v. Torrey, 310 F. Supp. 192 (N.D. Cal. 1970); Wood v. Alamo Heights Independent School District, 308 F. Supp. 551 (W.D. Tex. 1970); Schwartz v. Galveston Independent School District, 309 F. Supp. 1034 (S.D. Tex. 1970); and Pritchard v. Spring Branch Ind. School District, 308 F. Supp. 570 (S.D. Tex. 1970).

[12]392 F. 2d 697 (5th Cir. 1968).

[13]299 F. Supp. 1360 (M.D. Ala. 1967).

[14]See, e.g., Brexton v. Board of Public Instruction of Duval County, 303 F. Supp. 958 (M.D. Fla. 1969).

[15]See, e.g., Brownlee v. Bradley County, 311 F. Supp. 1360 (E.D. Tenn. 1970).

[16]One court expressly held that "the growing of hair for purely commercial purposes is not protected by the First Amendment's guarantee of freedom of speech." Jackson v. Dorrier, 424 F. 2d 213, 217 (6th Cir. 1970).

[17]Richards v. Thurston, 424 F. 2d 1281, 1284-5 (1st Cir. 1970). Other courts have ruled that it is a denial of "equal protection" to discriminate on the basis of hair length unless the offending state agency can show some convincing reasons for doing so. See e.g., Zachry v. Brown, 299 F. Supp. 1360 (N.D. Ala. 1967); Griffin v. Tatum, 300 F. Supp. 60 (M.D. Ala. 1969); Westley v. Rossi, 305 F. Supp. 706 (D. Minn. 1969); Calbillo v. San Jacinto Junior College, 305 F. Supp. 857 (S.D. Tex. 1969).

[18]Stevenson v. Wheeler County Board of Education, 306 F. Supp. 97 (S.D. Geo. 1969).

[19]Lovelace v. Leechburg Area School District, 310 F. Supp. 579 (W.D. Penn. 1970). Judge Perry of Illinois is the other judge who finds no constitutional protection for long hair, at least when the students disavow a political expression and wear their hair long solely because they "like it that way." Livingston v. Swanquist, 314 F. Supp. 1 (N.D. Ill. 1970).

[20]Farrell v. Dallas Independent School District, 392 F. 2d 697 (5th Cir. 1968); Davis v. Firment, 408 F. 2d 1085 (5th Cir. 1969); Jackson v.

Dorrier, 424 F. 2d 213 (6th Cir. 1970); Crews v. Cloncs, 303 F. Supp. 1370 (S.D. Ind. 1969); Gfell v. Rickelman, 313 F. Supp. 364 (N.D. Ohio, 1970); Giangreco v. Center School District, 313 F. Supp. 776 (W.D. Mo. 1969); Brick v. Board of Education, Sch. District No. 1, Denver, Col., 305 F. Supp. 1316 (D. Col. 1969); Wood v. Alamo Heights Independent School District, 308 F. Supp. 551 (W.D. Tex. 1970); Pritchard v. Spring Branch Independent School District, 308 F. Supp. 570 (S.D. Tex. 1970).

[21]Richards v. Thurston, 304 F. Supp. 449 (D. Mass. 1969).

[22]Griffin v. Tatum, 300 F. Supp. 69 (M.D. Ala. 1969).

[23]Ferrell v. Dallas Independent School Dist., 392 F. 2d 697, 707 (5th Cir. 1968).

[24]Sims v. Colfax Community School District, 307 F. Supp. 485 (S.D. Iowa 1970).

[25]Richards v. Thurston, 304 F. Supp. 499 (D. Mass. 1969).

[26]Calbillo v. San Jacinto Junior College, 305 F. Supp. 857 (S.D. Tex. 1969).

[27]Brownlee v. Bradley County, Tennessee Board of Ed., 311 F. Supp. 1360, 1366-1367 (E.D. Tenn. 1970).

[28]Breen v. Kahl, 296 F. Supp. 702 (W.D Wis. 1969).

[29]Griffin v. Tatum, 300 F. Supp. 69 (M.D. Ala. 1969).

[30]Sims v. Colfax Community School District, 307 F. Supp. 485 (S.D. Iowa 1970).

[31]Westley v. Rossi, 305 F. Supp. 706 (D. Minn. 1969).

[32]Zachry v. Brown, 299 F. Supp. 1360 (N.D. Ala. 1967).

[33]Richards v. Thurston, 424 F. 2d 1281, 1286 (1st Cir. 1970).

[34]Calbillo v. San Jacinto Junior College, 305 F. Supp. 857 (S.D. Tex. 1969).

[35]Farrell v. Smith, 310 F. Supp. 732 (D. Maine 1970).

[36]Reichenberg v. Nelson, 310 F. Supp. 248, 253 (D. Neb. 1970).

[37]Livingston v. Swanquist, 314 F. Supp. 1, 3 (N.D. Ill. 1970).

[38] Griffin v. Tatum, 300 F. Supp. 60, 62 (M.D. Ala. 1969).

[39] Scott v. Board of Education, Union Free School District #17, 305 N.Y.S. 2d 601, 606 (Sup. Ct. Nassau County. 1969).

[40] Corley v. Daunhauer, 312 F. Supp. 811 (E.D. Ark. 1970).

[41] Neuhaus v. Torrey, 310 F. Supp. 192, 194 (N.D. Calif. 1970).

[42] Dunham v. Pulsifer, 312 F. Supp. 411, 419 (D. Vt. 1970).

[43] Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969).

[44] West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943).

THE FIRST AMENDMENT IN THE LAST YEAR: A REVIEW OF CASES AND TRENDS

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Because of the continuing uncertainty about the appointment of a ninth Justice, the Supreme Court did remarkably little in the First Amendment area during its 1969 Term. Where recent years have often produced as many as ten or a dozen major decisions affecting freedom of speech, press and assembly, the past Term saw only two cases adjudicated on the merits. The Term was, however, more significant for the cases not resolved--many of which were argued during the Term and have now been held over to be reargued before a full Court during 1970-1971. Because of the unusual nature of this past Term, we divide the present review of the Court's work into two segments, the first dealing with the cases actually decided and the other briefly summarizing the pending issues on the current calendar.

I. Cases Decided by the Supreme Court, 1969 Term

The first case resolved on the merits concerned the scope of the constitutional privilege for libellous statements about public officials and public figures. Six years ago the Court unanimously held in New York Times v. Sullivan, 376 U.S. 254 (1964), that the First Amendment protected from civil liability false statements about the conduct of public officials unless those statements were made with actual malice or with a reckless disregard of the truth. Later the privilege was extended to include defamatory statements about persons who were "public figures" although not holders of public office. But uncertainty and confusion have persisted in the lower courts about several aspects of this vital constitutional test--to what persons and what statements it applies, under what circumstances the privilege is lost, and the standard of proof required to overcome the privilege. In each of the years since the New York Times decision, the Court has reviewed at least one case involving an incorrect application of the test.

The issue arose this past Term in Greenbelt Cooperative Publishing Association v. Bresler, 398 U.S. 6 (1970). The plaintiff (Bresler) was a member of the Maryland legislature and a prominent real estate developer. He had undertaken complex negotiations to obtain zoning variances that would allow him to build high-density housing on land which he owned. Meanwhile he was involved in collateral negotiations with the same town over land needed for school expansion. A local newspaper reported in detail several council meetings devoted to these negotiations. In one report, the paper quoted speakers at the meetings who had charged Bresler with "blackmail" because

of his posture in the two related deals. He thereupon brought suit against the newspaper, charging its publishers with attributing to him the crime of blackmail, punishable under Maryland law. (To charge someone falsely with such a crime would constitute a libel under the law of most states). The trial court awarded damages. The Maryland court of appeals affirmed the decision, over the paper's claim that the reports were (a) accurate accounts of what had been said and (b) even if inaccurate, were constitutionally privileged.

The Supreme Court unanimously reversed the Maryland decision on several grounds. First, the standard applied by the trial judge--under whose instructions the jury had found against the newspaper--was defective. The judge had charged that the plaintiff might recover if he proved the statements were made with malice or with a reckless disregard for whether they were true. He added that the requisite "malice" could be inferred from the language of the reports themselves. But in earlier cases the Supreme Court had held, and now reaffirmed, that a libel plaintiff who is a public figure or public official must prove "that the utterance was false and that it was made with knowledge of its falsity or in reckless disregard of whether it was false or true." Nothing less would establish the essential "malice"--an ingredient which could not simply be inferred or implied from a false, even carelessly false statement.

The Court went on to examine the publication under the proper constitutional test. Concededly the report itself was accurate; the only issue was whether the use of the charges at the meetings unfairly imputed culpability to the plaintiff. On its own independent study of the publications, the Court concluded that no reasonable person would find in the reports the inference alleged by the plaintiff. There was, moreover, an especially strong constitutional interest in permitting free and uninhibited reporting of public debates, controversial though they are likely to be. To find liability under these circumstances would therefore "subvert the most fundamental meaning of a free press."

There were two separate concurring opinions. Justices Black and Douglas argued again, as they had in every case since the original New York Times decision, that libel judgments for statements about public officials and public figures simply should not be permitted at all. Justice White, on the other hand, took a narrower ground. While he agreed with his colleagues that the trial judge had improperly charged the jury with respect to the element of "malice," he felt that under a valid instruction a jury might find the newspaper reports libellous. Moreover, if the jury found that the publications did impute a crime to the plaintiff, then the requisite malice would effectively have been supplied since the imputation was false and the paper knew it to be so. Thus Justice White would have sent the case back for a new trial under proper instructions.

The other case, Schacht v. United States, 398 U.S. 58 (1970), involving an anti-war protest. The case began with the arrest of performers in an anti-war skit held in front of an induction center in Houston. One of the group was charged with violating a federal law that makes it a crime for any person "without authority /to wear/ the uniform or a distinctive part thereof . . . of any of the armed forces of the United States." It was clear the defendant was not a member of the armed forces and thus was not "authorized" to wear the uniform. But he invoked an exception in the law allowing an actor to wear the uniform while portraying a military figure in a movie or theatrical production, "if the portrayal does not tend to discredit that armed force." Since the skit was satirical, however, it could be maintained (and the lower courts found) that discredit to the armed forces was implicit in the performance and use of the uniform.

The Supreme Court unanimously reversed the conviction. Beginning with the assumption that the anti-war skit was a "theatrical production," the Court held that the statute had been so applied as to punish persons whose use of the uniform criticized the armed forces, while protecting those whose portrayals were laudatory. Mr. Justice Black pointed out that "an actor, like everyone else in our country, enjoys a constitutional right to freedom of speech, including the right openly to criticize the Government during a dramatic performance." Since the last clause of the statute invoked in this case clearly denied that right to a person who used a wearing of an army uniform as the vehicle for his protest against government policy, the infringement of constitutionally protected expression was apparent on the face of the law. A statute which "leaves Americans free to praise the war in Vietnam but can send persons like Schacht to prison for opposing it" could not stand under the First Amendment.

Three Justices concurred separately. In their view a conviction might have been proper if the jury had been narrowly charged to differentiate between a theatrical performance--clearly fictitious to all observers--and other portrayals involving military uniforms where the make-believe quality was less apparent. The concurring Justices thus suggested that a person might be convicted for certain unauthorized uses of military apparel that would discredit the armed forces. But in this case the judge had charged the jury in such broad terms that they might or might not have found the induction center skit to be a "theatrical performance." Since the charge was hopelessly vague, and the meaning of the jury's verdict therefore uncertain, the defendant was entitled to a reversal--though on a narrower ground than Justice Black's broad premise.

During the 1969 Term, two free speech cases of potential importance were argued and decided without reaching the merits of the constitutional question. Both involved student protests and demonstrations. One case promised for a time the first Supreme Court decision in several decades on the constitutional rights and liberties of state college and university students.

These expectations were generated by the Supreme Court's decision in October to review the case, Jones v. Tennessee State Board of Education, 407 F.2d 834 (6th Cir. 1969). It was promptly docketed and oral argument took place in January. But after the argument, in a rare form of abstention, the Supreme Court dismissed the writ of certiorari as "improvidently granted"--meaning that had the Justices known initially what they later learned about the case they would never have decided to review it at all.

The case involved a student who had been expelled from predominantly black Tennessee A. & I. University for distributing leaflets in the summer of 1967 urging a boycott of fall registration. The student claimed both before the campus hearing board and in the federal district court and court of appeals that he had a First Amendment right to distribute the leaflets in question. The courts rejected these claims because of the highly charged and inflamatory nature of the statements made against the university administration. The leaflet called the president and his associates "puppet fools, erroneously acting, educated Toms," who had "sold out the student body by directing . . . atrocities against us." In response to these "atrocities," the leaflet urged fellow students to "cast your vote for student power" and to boycott fall registration "as long as the puppet administration refuses to acknowledge that this is our university."

As late as the time of the oral argument, this case appeared to present squarely the issue of the scope and meaning of the First Amendment on the college campus. But at the argument it developed that the student had lied to the discipline committee at the campus hearing. His expulsion thus reflected both his false words at the hearing and his inflammatory words in the handbill. Thus a majority of the Court dismissed the case in a brief unsigned opinion: "This fact sufficiently clouds the record to render the case an inappropriate vehicle for this Court's first decision on the extent of First Amendment restrictions upon the power of state universities to expel or indefinitely suspend students for the expression of views alleged to be disruptive of the good order of the campus."

Justices Douglas and Brennan vigorously dissented, however, on two grounds. First, they felt the student had not been charged with lying, nor had mendacity been an explicit basis for the indefinite suspension. Thus in their view he had been denied important procedural rights to which college students are constitutionally entitled. More important, the basing of campus discipline on the contents of the hearing seemed to the dissenting Justices a clear violation of the student's First Amendment rights. Much of the language might, they acknowledged, be "ill tempered and in bad taste." But that was not the standard to be invoked in testing the scope of free speech. Previous cases had held beyond doubt that "even strongly abusive utterances or publication, not merely polished and urbane pronouncements, of dignified people, enjoy First Amendment protection." If the leaflet would have been constitutionally protected off the campus, then the only issue remaining was whether corresponding liberties applied on the campus. Justices Brennan and Douglas con-

ceded that "the whole panoply of the Bill of Rights" probably does not apply to college disciplinary proceedings. But surely the rudiments, both substantive and procedural, do apply. And it was their conclusion that this case was a proper vehicle to define the guarantees available in academia, since the expulsion being appealed lacked essentials of basic due process.

In the second case, an anti-war group at the University of Texas at Austin brought suit in a federal district court seeking an injunction against enforcement of a state disturbing-the-peace law. At the time the suit was filed, charges were pending under the statute against members of the group for arrests during an anti-war demonstration the previous week. Shortly thereafter the state charges were dismissed. But the district Court kept the case and went on to decide the merits, holding the state law violative of freedoms of speech and assembly because of its broad and vague language. By this time, though, there was no occasion to issue an injunction against the enforcement of the statute since the cases that gave rise to the suit were moot. Thus the federal court merely granted a declaratory judgment.

The issue before the Supreme Court was a rather narrow and technical one: When a three-judge district court issues this sort of order--holding a state law unconstitutional but not staying its enforcement--can the decision be appealed directly to the Supreme Court? The answer was clear from the statutory provisions and earlier cases. Thus the Supreme Court dismissed the appeal, finding of course no occasion to consider the merits since it lacked jurisdiction to proceed. Presumably there will now be an appeal to the court of appeals for the Fifth Circuit, and the case may eventually reach the Supreme Court through that channel.

II. Cases Postponed by the Supreme Court to the 1970 Term

The Term of Court just ended is really much more significant for what it failed to decide than what it did decide. We have already reviewed two cases in which the Court actually heard full oral argument but then dismissed short of the merits. More important are a large group of cases, raising many different free speech and press issues, that were also argued last year but have been held over for further argument this Term and presumably for decision during the spring of 1971. (The Court has a self-imposed rule that a case must be decided during the Term it is argued. If a decision is not reached, then it must be argued again the next Term and cannot be decided on the basis of the earlier argument.) In addition a substantial number of cases were docketed and accepted for review too late in the spring of 1970 to be argued before the Court rose for the summer. These too will be argued and decided during 1970-1971.

This is not the place to describe the pending issues in any detail. A brief and necessarily superficial summary must suffice. In the list that follows the numbers in parentheses indicate the 1970 Term docket numbers of the

cases now pending under each rubric:

Criminal Syndicalism and Anarchy Laws. Held over from early last Term are three cases involving the constitutionality of old state laws proscribing criminal syndicalism, criminal anarchy and related speech-action offenses. One comes from California (2), and raises anew the validity of a law which the Court sustained in 1927. The other two (7), (9), implicate a New York state law which was also sustained in the 1920's. In both cases it is argued that subsequent decisions have required so much greater precision in this area and have so restricted state power to regulate speech and political activity that the old precedents are no longer valid.

Loyalty-Security Measures. Two cases to be argued early in the new Term (79, 105) question the consistency with the First Amendment of a Florida law requiring public employees to swear they they support the state and federal constitutions and that they do not believe in the overthrow of the Government by force. One case involves public school teachers, the other a group of faculty at the University of Florida, all having been denied or dismissed from state employment for refusing to sign the oath.

Right To Strike in Public Employment. A case growing out of last year's postal employee strike (101) challenges a federal statute that denies government employment to persons who assert the right to strike against the government or who belong to organizations which they know assert that right. The United States District Court for the District of Columbia has held the statute violative of the First Amendment freedoms of public workers, even though its terms have not yet been applied to deny employment to any individual.

Political Affiliation and Admission to the Bar. Three cases test the scope of a state's power to inquire into political affiliations and past activities of applicants for admission to the bar. Cases coming from Arizona (15) and Ohio (18) approach the issue in identical fashion; both involve persons who have been denied an opportunity to practice law because they declined to tell the bar examiners whether they had ever belonged to the Communist Party. The third case (49) arises from New York and presents the issue in a slightly different posture: The statute governing admission to the state bar requires each applicant to "furnish satisfactory proof of" his belief in the form of government of the United States and his loyalty to it. The New York case thus raises two questions--first, whether the inquiry is a proper one for the state to make at all, and even if it is, whether the statute improperly places the burden on the applicant to prove his loyalty rather than requiring the bar examiners to prove his disloyalty.

"Intimidation" As A Crime. One case argued last Term and held over for reargument (4) challenges the constitutionality of an Illinois statute which prohibits threats to "commit any criminal offense." A federal district court in Chicago held this broad law violative of the First Amendment, and the state's

attorney appealed to the Supreme Court.

Injunctions, Real Estate Brokers, and the Right of Privacy. Another case from Illinois (135) presents a novel conflict between legal protection for the right of privacy and First Amendment freedoms. The plaintiff is a real estate broker in a Chicago suburb. A community organization dedicated to promoting integration distributed leaflets within the suburb attacking the broker's practice of soliciting business in a racially changing part of the community. The broker sought an injunction to protect his right to privacy. The trial court found that the adverse publicity did indeed invade the broker's privacy and granted the injunction, extending to all parts of the community. The appellate court sustained the order and the organization appealed, arguing that so sweeping a decree against peaceful publicity and informational picketing invaded protected rights of expression.

Obscenity and the First Amendment: Substantive Standards. Two cases consider the recurrent problem of defining obscenity in a manner consistent with freedoms of expression. An attack on Texas statutes (41) brought by a Dallas underground newspaper raises two issues--one, whether it is constitutionally permissible to proscribe mere possession of obscene material for private use--a matter seemingly settled by the Supreme Court against regulation last spring. The other issue is more difficult: Whether a general obscenity law is constitutionally defective because it omits the requirement that the suspect material must be shown to be "utterly without redeeming social importance."

The other case (83) also considers the "private" character of obscenity and pornography. An appeal challenges a Massachusetts prosecution for showing an allegedly obscene motion picture in a theatre to a paying adult audience that had been warned of the character of the film. (A federal district court had enjoined such a prosecution on First Amendment grounds; the state attorney general appealed the ruling.)

Obscenity and Procedure: Guarantees of the Fifth and Fourteenth Amendments. A larger group of cases will explore several facets of procedure required for prohibition and definition of obscenity. Two appeals (55, 58) pose extensive challenges to federal procedures for regulation and restriction of the mailing of obscene materials. A federal district court in Georgia has held unconstitutional the present statutory machinery under which the Postmaster General holds an administrative hearing to determine whether suspect material is obscene and, if he so finds, may then impose a mail block against the sender without further proceedings. The machinery is challenged because it fails to provide, as the Supreme Court has required in other contexts, a prompt judicial determination of the question of obscenity following an initial administrative decision.

The role of and right to a hearing is centrally involved in another case (60). A federal court in Louisiana has issued an injunction against searches conducted by the infamous Leander Perez and his staff--searches which resulted in arrests of newsstand operators and seizures of their materials without a prior adversary hearing on the issue of obscenity. The Supreme Court has required such adversary determinations in other obscenity contexts, and the present case is arguably covered by analogy.

Finally, the film, I Am Curious, Yellow will come before the Court this Term (63). The issue in the case is partly substantive since Grove Press (distributor of the film) seeks to upset a decision of the Maryland Court of Appeals holding the film to be "utterly without redeeming social importance" despite praise by literary critics. But the deeper issue is a procedural one--whether prosecutors in every state can continue to check the showing of films and the distribution of books and magazines even though a federal court has held the material not to be obscene. (Of course if the Supreme Court has so held, that ends the matter and binds the states; but if the strongest authority is a lower federal court in another circuit or district the matter is unclear.)

Libel, Slander and the First Amendment. As we have already seen, the Supreme Court has frequently been called upon since 1964 to interpret and define the scope of the New York Times privilege for defamatory statements about the official conduct of public officers and public figures. Three further issues will be reviewed this Term: First, in a case from Philadelphia (66), the question is whether the New York Times rule should be expanded to cover one who is neither a public official nor a public figure in the usual sense, but is only incidentally involved or mentioned in connection with a public event. (The plaintiff was a distributor of nudist magazines whose name had been falsely mentioned in radio news reports of police raids. The lower federal courts held the New York Times rule applicable and denied recovery because the distributor had failed sufficiently to prove "actual malice.")

A case from New Hampshire (62) raises related questions about the scope of the New York Times rule. The plaintiff, a candidate for the United States Senate, sued a newspaper for calling him a "former small time bootletter"--a reference to alleged activities taking place more than 25 years earlier. The state courts refused to apply the Times privilege; although the plaintiff was now a public official (or a candidate for public office, which is identical for this purpose), the statements referred to a "private" phase of his life and career which was not rendered public by his subsequent entry into politics.

The third case represents the latest stage in a lengthy litigation. (109) Ten years ago the Supreme Court upheld a suit for damages under the Civil Rights Act against a Chicago police officer charged with breaking into an apartment (along with other officers) and beating the occupants. Later the United States Commission on Civil Rights included a reference to the incident

in its report on law enforcement. The Commission was careful to identify the incident as "alleged to be true." Time Magazine wrote up the whole affair, including a summary of the Civil Rights Commission account in which it omitted the cautionary "alleged to be." The policeman then sued for libel. The lower courts held against Time on the point, finding in the discrepancy a sufficient basis to submit to the jury the issue of "actual malice." Since the jury found the requisite malice, the court of appeals sustained the jury's verdict against the magazine. Time has now appealed, charging an erroneous application of the New York Times standard.

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